

GETTING IT RIGHT:

Recommendations and Action Plan for a Better Jail

by

The Correctional Reform Working Group

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APPENDIX: *Getting it Right: Better Ideas for a New Jail*

GETTING IT RIGHT:

Recommendations and Action Plan for a Better Jail

In exercising their power on behalf of the people and in fulfillment of their responsibilities, obligations and service to the people, the legislature, governor, lieutenant governor, executive officers of each department, the chief justice, associate justices, and judges of the appellate, circuit, and district courts may contemplate and reside with the life force and give consideration to the “Aloha Spirit”.

Hawai‘i Revised Statutes § 5-7.5(b)

I. INTRODUCTION

A Window of Opportunity. The O‘ahu Community Correctional Center (“OCCC”) is old, dilapidated, and by any standard an unfit environment for both inmates and staff. It outlived its usefulness decades ago and there is widespread agreement that it must be replaced.

Planning for the replacement of OCCC, *if we do it right*, provides a unique opportunity to rethink important elements of the correctional system in ways that will make our community safer, and save taxpayers hundreds of millions of dollars. Hawai‘i must seize this once in a lifetime opportunity and replace OCCC with a smart, efficient, and cost-effective 21st century jail. If properly planned, designed, and staffed, the new jail can reduce recidivism, improve public safety, and have a positive impact on some of O‘ahu’s most intractable problems – homelessness, addiction, and mental illness – thus improving public health as well as public safety.

Unfortunately, the jail the State has been planning for the past six years will not reduce Hawai‘i’s unacceptably high recidivism rate or otherwise make O‘ahu safer; it will simply do what the old jail has done for decades – warehouse inmates and release them to the street in as bad or worse condition than when they entered the jail. The new jail has been planned without meaningful public input, and without regard to best planning and design practices as established by the National Institute of Corrections (“NIC”). The planning that has been done to date calls for a large, expensive, and punitive jail that is completely at odds with contemporary correctional standards as well as a robust framework of Hawai‘i statutes, rules and regulations which *mandate that the State transition from a punitive to a rehabilitative correctional system.*

Thankfully, the 2022 Legislature, relying in part on recommendations of the Hawai‘i Correctional Oversight Commission, effectively paused the jail planning process, providing a brief window of opportunity to revisit plans for this generationally important project.¹

The Recommendations of the Oversight Commission. The Hawai‘i Correctional System Oversight Commission (“Oversight Commission”) was created in 2019 by Act 179 (2019 Haw. Sess. L., Act 179) with a broad mandate to improve Hawai‘i’s correctional system by facilitating the transition from a punitive to a rehabilitative and therapeutic model.² The five current members of the Commission collectively have more than 100 years of experience with Hawai‘i’s criminal justice system and have closely followed the planning for the new jail. As planning progressed, the Commissioners became increasingly concerned by what they saw, and in their December, 2020 report to the Legislature they called on the Department of Public Safety (“DPS”) to “immediately pause the planning for the new jail and create an Advisory Committee to review, *and if necessary revise*, the planning that has been done to date, and to actively participate in the planning process going forward.” (emphasis in original).³

DPS and the Department of Accounting and General Services (“DAGS”), which are jointly planning the new jail, rejected the Commission’s 2020 recommendation and continued to move ahead without an advisory committee or any other means of engaging the community in the planning process in a meaningful way.

In its 2021 Annual Report, the Oversight Commission reaffirmed its position, once again calling for a pause of the planning process because: (1) DPS and DAGS failed to act on research *provided by its own consultants* showing how the jail population could be safely reduced; (2) the Waiawa and Kulani correctional facilities both have minimum security beds available for inmates preparing to reenter the community, which militates against the need for 388 reentry-beds at the new jail; and (3) the new jail is too expensive, particularly if it is built with a “public-private partnership” which would require the Legislature to appropriate a huge amount of money for lease rent as part of DPS’s operating budget.⁴

At the Commission’s December, 2021 meeting, attorney Robert Merce, the former vice-chair of the House Concurrent Resolution 85 Task Force on Prison Reform, presented a paper he authored – *Getting it Right: Better Ideas for a New Jail* – which showed that DPS and DAGS had not followed best practices in planning the new jail; that the projected \$1 billion cost of the new jail was not sustainable; that it was essential to create “off ramps” or alternatives to jail, particularly for low-level, non-violent offenders; that a public-private partnership (“P3”) is not appropriate for the new jail; and that Hawai‘i’s jails should have a “problem solving” function that aligns them with the judiciary’s problem solving courts (drug, mental health, and veterans courts) *to create a continuum of care that will reduce recidivism and improve public health as well as public safety.*⁵

The Commission accepted Mr. Merce’s analysis and recommendations, and on January 3, 2021, sent an electronic version of his paper to the Chair and Vice Chair of the House Finance and Senate Ways and Means committees, along with a letter expressing that the Commission “continue[s] to be concerned about the planning and development of a new Oahu Community Correctional Center [.]”⁶ In the letter, the Commissioners explained in greater detail why DPS and DAGS were on the wrong track with respect to the planning, size, and philosophy of the new jail. The Commissioners’ letter also described why a P3 was a bad idea:

Generally, construction in Hawaii is funded through GO [General Obligation] bonds. Bonds issued by entities like State governments (assuming a good bond rating) attract more attractive interest rates than privately issued bonds. We may have to pay a premium if we opt for private financing through a P3 contract. The real issue, however, is that we will have to pay for the lease rent through the Department [of Public Safety’s] operating funds. We don’t know how much this will be, though we know it will be expensive, and we don’t know for how long. Will it be twenty years? Thirty? What’s the impact on the Department during this period?⁷

The Commission’s 2021 Annual Report to the Legislature and its January 3 letter were measured in tone, but nevertheless made it perfectly clear that as presently planned, the new jail will be “*a financial disaster and produce bad outcomes for decades . . .*” (quoting *Getting it Right*).⁸

The Purpose of this Paper. *Getting It Right: Recommendations and Action Plan for a Better Jail* redefines the function of the jail. Instead of an environment that warehouses people in punitive conditions, it calls for an environment where prisoners’ medical, social, and economic needs are identified and addressed, and where they receive comprehensive discharge planning and reentry support as part of a concerted effort to reduce recidivism and improve public health and safety.

The purpose of this second iteration of *Getting It Right* is to outline the steps that we believe the State should take to build a transformative jail that will improve public safety and public health, address the inequities of our criminal justice system, save lives, save money and State resources, and meet the ever-evolving needs of our community.

We start at the beginning, and attempt to build support for an evidence-based planning process, consistent with nationally recognized best practices, that will maximize the potential to get the planning and design of the new jail *right*. This is critically important because the consequences of getting it *wrong* will be many more decades of a correctional system that does not make us safe, does little to address public health issues, causes more trauma than it prevents, and costs far more than is necessary.

Getting it *right* will not just benefit inmates and society as a whole, it will also improve the lives and working conditions for the dedicated correctional staff on whom we rely to operate and manage our State’s correctional facilities. The process that we are proposing will facilitate a better work environment and increased training and pay for correctional officers.

We stress that without addressing the issues discussed in this paper, the current planning process will result in a jail that is poorly planned, too big, too expensive, and tethered to old ideas that will produce bad outcomes and undermine efforts to make badly needed systemic correctional reforms. Without timely efforts to change course, we foresee *massive financial and programmatic failure ahead for the new jail*.

II. FUNDAMENTAL CHANGE IS NECESSARY AND LONG OVERDUE

A. A Brief Overview of Hawai‘i’s Correctional System

Hawai‘i’s prison population was relatively stable from Statehood in 1959 until the late 1970s, when the number of prisoners began to increase dramatically due to passage of new “tough on crime” laws.⁹ The State’s prison population doubled in just four years, from 1980 to 1984, and throughout the 1980s the average annual increase in Hawai‘i’s prison population was the second highest in the nation.¹⁰ By the mid-1990s, Hawai‘i’s prisons had become so overcrowded that the State began sending prisoners to privately-operated for-profit prisons on the continent.¹¹ Hawai‘i currently has 1,075 prisoners at the Saguaro Correctional Center in Eloy, Arizona, operated by CoreCivic, a publicly traded corporation headquartered in Brentwood, Tennessee (CXW on the New York Stock Exchange). We are one of only five states to house more than 20% of our prisoners in for-profit prisons.¹²

In the past 44 years, Hawai‘i’s prison population increased 479% while the general population increased 55%.¹³ Hawai‘i’s incarceration rate – i.e. the number of prisoners per 100,000 population – is 292, which is higher than 85% of the countries in the world, including every Western European country.¹⁴ Hawai‘i has more prisoners than Norway, even though Norway has more than four times the population of Hawai‘i.¹⁵ If Hawai‘i was a country rather than a state, it would rank among the top 35 highest incarcerators in the world.¹⁶

The rapid increase in the prison population over the last five decades has led to skyrocketing costs. DPS’s Corrections Budget for FY 2022-2023 is \$236.5 million.¹⁷ It now costs \$87,000 a year to incarcerate a person in Hawai‘i; available data shows that Hawai‘i’s cost per inmate is more than double the national average, and is close to the highest, if not the highest, in the country.¹⁸ Pretrial detainees – many of whom are charged with low-level offenses and are held in jail for no reason other than that they cannot afford bail – make up around 62% of the OCCC population and collectively cost the State \$167,000 a day (\$61 million a year).¹⁹ Statewide pretrial detainees cost the State \$266,000 a day or around \$97 million per year.²⁰ The new jail is

expected to cost approximately \$1 billion, or approximately \$725,000 per bed.²¹ Meanwhile, the State is spending \$40 million to expand the Women's Community Correctional Center ("WCCC") in Kailua,²² and DPS is planning to build a patchwork of medium security housing units at the prisons on Maui, Kaua'i, and Hawai'i Island.²³

Despite spending hundreds of millions of dollars on corrections, Hawai'i has an unacceptably high recidivism rate that is substantially in excess of 50%. In other words, more than half of the prisoners who are released from Hawai'i's prisons will be rearrested, have their parole revoked, or be found in criminal contempt of court within 36 months of release. Hawai'i's Interagency Council on Intermediate Sanctions' most recent "Dashboard Report" shows that from 2014 through 2018 five key recidivism indicators increased significantly, with 2018 figures demonstrating a very troubling trend in the wrong direction:

- The total recidivism rate increased 10.0 percentage points in FY 2018 (from 53.5% in 2017 to 63.5% in 2018).
- The recidivism rate for new law violations for probationers, parolees, and maximum term release ("maxed-out") offenders increased by 8.0 percentage points in FY 2018.
- Criminal contempt of court recidivism rates for probationers, parolees, and maxed-out offenders increased 4.0 percentage points in FY 2018.
- Probation and parole revocation rates increased 3.7 percentage points in FY 2018.
- In FY 2018, the average length of time that elapsed prior to recidivism significantly decreased to 10.2 months, or 3.3 fewer months than were reported for FY 2017.²⁴

Hawai'i currently has 29,427 individuals under some kind of correctional supervision, including 4,294 in jail or prison,²⁵ 22,609 on probation,²⁶ and 1,524 on parole.²⁷ The high number of probationers is due in part to the fact that *Hawai'i keeps people on probation longer than any other state (58.9 months on average)*.²⁸ That is six times higher than the average term of Kansas (9.3 months).²⁹

In 2010, the Office of Hawaiian Affairs ("OHA") published a three-year collaborative study which showed that Native Hawaiians are overrepresented at every stage of Hawai'i's criminal justice system.³⁰ The disproportionality begins with arrest and accumulates at each stage in the system. Native Hawaiians make up approximately 18% of the adult general population, but 37% of the incarcerated population.³¹ They receive longer prison sentences than most other racial or

ethnic groups, they are more likely to go to prison if they are found guilty of a crime, and they are disproportionately represented in the out-of-state prison population.³² They serve more time on probation than any other ethnic group except Hispanics, and they make up the largest percentage of people who return to prison for parole violations.³³

Addressing the systemic problems associated with Hawai‘i’s criminal justice system is not just an issue of public safety, public health, and financial responsibility, it is an issue of equity and racial justice. Fortunately, there are numerous organizations and groups, including OHA, that have collected extensive data on these issues and are at the forefront of developing solutions to address the racial disparities within our criminal justice system. Unfortunately, DPS and DAGS have not engaged subject matter experts, like OHA, in the planning process. OHA, and other entities that have been working on criminal justice issues for years, *must be included in the collaborative design process contemplated by this paper.*

All of Hawai‘i’s jails and prisons are old, rundown, and understaffed, and three of them – OCCC, the Maui Community Correctional Center (“MCCC”), and the Hawai‘i Community Correctional Center (“HCCC”) – are severely overcrowded.³⁴ Overcrowding and understaffing have been cited as a primary cause of riots at OCCC in 2016,³⁵ MCCC in 2019,³⁶ and HCCC in 2021.³⁷

OVERCROWDED CORRECTIONAL FACILITIES AS OF JUNE 21, 2022

Facility	Design Capacity	Operational Capacity	Population [Head Count]	% Above Design Capacity	% Above Operational Capacity
HCCC	206	226	298	145	132
MCCC	209	301	319	153	106
OCCC	628	954	1094	174	115

Source: Department of Public Safety End Of Month Population Report
July 31, 2022

Many of the deficiencies and problems with Hawai‘i’s correctional system were laid bare by the COVID-19 pandemic. In 2021, a federal judge found that DPS failed to take reasonable steps to protect Hawai‘i’s prisoners from the COVID-19 virus, and that its response to the pandemic was so inadequate that it amounted to “deliberate indifference” to the welfare of Hawai‘i’s prisoners.³⁸ The judge ordered DPS to follow its COVID-19 Response Plan and awarded more than \$250,000 in attorneys’ fees to the lawyers who brought the case.³⁹ There were at least nine deaths attributed to COVID-19 at Hawai‘i correctional facilities as of February, 2022; but the tragic response to the pandemic is not the only symptom of the ongoing dysfunction within the State’s criminal justice system. As shown in the following section, the problems plaguing DPS are systemic and require a systemic response.

B. The Harsh Reality of a Broken Correctional System

Jails and prisons are closed institutions, and consequently the public knows very little about what goes on behind their walls and fences.⁴⁰ Supreme Court Justice Anthony Kennedy said that prisoners live “in a hidden world.”⁴¹ Justice William Brennan called it “a shadow world . . . that few of us can imagine.”⁴²

One of the main functions of the Hawai‘i Oversight Commission is to bring transparency to the correctional system – and that is exactly what it been doing in the past two months.⁴³ It has shone a bright light into a dark system that has been ignored for decades – and what it has found is shocking.

1. The Oversight Coordinator’s Report on the Hawai‘i Community Correctional Center (HCCC)

On August 25, 2022, Oversight Coordinator Christen Johnson and Commissioner Ted Sakai toured the Hawai‘i Community Correctional Center (“HCCC”) in Hilo. They found that the entire facility was “egregiously overcrowded.”⁴⁴ Nearly every cell designed for one person had three or four occupants. The Punahale building, which has a capacity of 16, housed 83 prisoners, *more than five times its capacity*. The Waianuenue building, which has an operational capacity of 40, housed 78 inmates, *almost double its capacity*.

The four cells used to house women appeared to be designed for intake or short-term housing. They have *no toilets and no access to water*, yet five women were crammed into one of the cells. They slept on mattresses on the floor. One of the women had been housed in the “dry cell” (the term for no toilet or water) for a month, the others for several weeks.

Another cell held a woman who appeared to be on suicide watch or safety watch. Her cell did not have water, a toilet or a mattress. The remaining cells housing women prisoners “could not be viewed due to the glass being blocked by either a dried liquid or paper from the inside of the cell. It was unclear how long the glass had been blocked. Since the area had not been set up as a housing area, “it was also difficult to tell how much supervision the women had, or who was designated to allow the five women in the dry-cell opportunities to use the restroom.”

In the severely crowded Punahale building, 15 men were “housed” on mattresses placed on the floor of a dayroom that had *no running water or toilets*. Some of cells had broken locks and were secured with padlocks, a dangerous practice because it creates delay in reaching inmates if there is an emergency such as assault, fight, or fire.



HCCC Punahale Building. Capacity 16, Occupancy 83
(Photo: Honolulu Civil Beat)

During the pandemic, DPS purchased a shipping container to house HCCC inmates who were exposed to COVID or who had a positive COVID test. The shipping container cells appeared to be made for two people but housed three or sometimes four men (when present, the fourth person had to sleep on a mattress on the floor). The shipping containers had “*little circulation, no food slot, and a small window with low visibility for officers to see inside.*” Ms.



A shipping container with four cells, similar to the one at HCCC

Johnson noticed that the lights were not working in two of the cells. Due to a lack of windows and natural light, *these cells were completely pitch black*. An officer said that the staff used their flashlight to check on the inmates.

There was a lack of programs and basic services. In-person visits were not allowed due to ongoing construction. There was *no outdoor recreation*. The prisoners did not appear to have soap or hygiene products, uniforms were mismatched and torn, there was no access to underwear, laundry was returned to inmates in wet or soggy condition, prisoners said that it took several weeks to receive their mail, and grievances filed by inmates were ignored by staff.

Suicide was a serious concern. During the tour, the Oversight Coordinator witnessed two individuals she believed to be on suicide watch (because they were wearing suicide smocks), who were being held “outside near the shipping container/covid pod. It was unclear where they were being housed.” Commissioner Sakai noticed that two males on suicide watch were standing in the corridor next to the door to the dayroom. A female Adult Correction Officer (ACO) was with them throughout. Apparently, they were going to the bathroom. Each went separately.

When they were in the bathroom, the door was closed and there was no way they could be observed.

During a second tour of HCCC on August 31, 2022, the Oversight Coordinator found:

[T]wo individuals on Safety Watch who were housed behind a door in Punahele, on the floor, in front of four cells in G Unit. This is of serious concern due to 1) lack of access to water and toilets, 2) lack of visibility from officer desk, 3) lack of privacy from 12+ people in custody within the cells, 4) no bedframe, 5) no area to store their property, and 6) *a complete lack of humane treatment and decency as a whole towards individuals with potentially self-harming ideations and/or actions*. This is of particular concern given the recent string of successful suicides within the Hawaii correction system.

Coordinator Johnson characterized the conditions at HCCC as “horrendous” and representative of a “system failure” that took months or years to reach its present state. That means that DPS administrators knew, or had reason to know, of the conditions for a long time and did nothing about them. Further, as reporter Kevin Dayton points out in Honolulu Civil Beat, several of the problems that are discussed in the oversight report were cited by Judge Jill Otake in her July 13, 2021 Order in *Chatman v. Otani*,⁴⁵ the case in which she found that the State was not adequately protecting inmates from the COVID-19 virus.

2. The Oversight Coordinator’s August 18, 2022 Report

On August 18, 2022, Coordinator Johnson, issued a report on a recent tour of the four correctional facilities on O‘ahu. The findings of the report include:

- **OCCC:** There was inadequate staff to provide direct observation of individuals on suicide and safety watch; 4 individuals were assigned to cells designed for 1 or 2 people; the infirmary was stationed in what appeared to be a hallway where there was a lack of space, privacy, and dignity; and clinic space was so small that it potentially affected patients’ privacy rights under HIPAA.
- **Halawa Community Correctional Center:** The highly punitive design was an obstacle to rehabilitation; there was limited out-of-cell time due to limited staff; there was limited access to the recreation yards; and mental health patients were housed in a punitive setting.
- **Waiawa Correctional Facility:** Staff shortages potentially affected opportunities for people in custody to work on work lines and become involved in job assignments and programming; there were no cameras at the facility, which creates concerns for investigative processes regarding drug use, contraband, and Prison Rape Elimination Act (“PREA”) investigations; and there was a lack of bed utilization in rehabilitative spaces.

- **Women’s Community Correctional Center:** The infrastructure was “extremely old”; an in-house air conditioner was out of service causing high heat in the cell area; and there was a lack of working cameras.
- **System wide:** The Department of Public Safety’s Electronic Medical Record (“EMR”) system had been out of commission for two months, “causing staff to rely on a paper/pen-based system with no clear indication of when the EMR will be back up for staff utilization.”⁴⁶

3. Significant Events in the Past Eight Months

In addition to the foregoing, a brief chronology of some of the things that have occurred in the past eight months provides a telling glimpse into the problem-plagued DPS:

- **February 23.** The State agreed to pay \$550,000 in damages to the family of 26-year-old Daisy Kasitati who hanged herself in her cell at MCCC *after her request to be put on suicide watch was refused.*⁴⁷
- **March 29.** A circuit court judge awarded \$1.375 million to the family of 28-year-old Joseph (Joey) O’Malley, who hanged himself in his cell at the Halawa Community Correctional Center *while on safety watch.*⁴⁸
- **April 7.** The head of training at DPS, was arrested for falsifying information about her qualifications for the job she held.⁴⁹
- **June 8.** A 29-year-old pre-trial detainee hanged himself in his cell at MCCC, *the fifth suicide at that facility in the past five years.*⁵⁰
- **June 13.** Twenty-one-year-old Diamond Simeona-Agoo, who had a history of mental illness, hanged herself in her cell at OCCC shortly after being taken off suicide watch and placed in solitary confinement as punishment for previous misconduct.⁵¹
- **June 29.** Attorneys in a federal class action lawsuit alleging that DPS consistently failed to provide timely or sufficient mental health services to seriously mentally ill inmates filed a motion for a preliminary injunction requesting that the court appoint a special master to oversee the provision of mental health services at all state prisons.⁵²
- **July 8.** Three correctional officers at MCCC were convicted in federal court of brutally beating an inmate and then conspiring to cover it up.⁵³
- **July 26.** A class action lawsuit was filed in state court seeking damages for inmates who became infected or died from COVID-19 due to the failure of DPS to take reasonable measures to protect inmates.⁵⁴

It is abundantly clear that DPS is operating without a coherent vision, master plan, or strategy. It is not following best practices, and it is not making evidenced-based decisions. We recognize that this is not the fault of any single individual or entity, but rather is the result of a chronic failure to dedicate the time, energy, and resources necessary to develop a responsive and effective correctional system with systemic accountability. These problems will not be solved by throwing money at a new jail – that will only perpetuate the issues described in this paper and lead to a massive waste of resources. However, by working through a collaborative, evidence-based design process and drawing from best practices around the world, the new jail can serve as a model for reimagining our criminal justice system in a way that benefits everyone.

Failure to use this opportunity to address the systemic problems plaguing our correctional system will lead to immeasurable costs down the road. In addition to the high costs to our society from an unacceptably high rate of recidivism – including everything from public safety to human suffering to dollars spent – Hawai‘i is spending millions of dollars every year defending lawsuits and paying settlements and judgments related to claims arising from outdated correctional policies, improper staff practices, and unconstitutional conditions of confinement. Without addressing the underlying problems that have led to these legal challenges, a new jail will do little to prevent these legal costs from continuing to increase in the future.

We submit that conditions at correctional facilities throughout the State today are as bad, or worse, than they were 40 years ago when OCCC and WCCC were under federal consent decrees or federally monitored settlement agreements. Unless the State acts now to improve conditions in its jails and prisons, *it stands to lose control of all or most of its correctional system to federal judges and federally appointed special masters or monitors*, in which case correctional reforms will be dictated and enforced by federal authorities, at great cost to the State.

The bottom line is that DPS is in crisis. Its problems are deep, broad, systemic, and enormously costly. They cannot be papered over or dismissed with more empty promises of reform. We cannot keep doing the same thing – or worse, spend huge sums of money in a public private partnership to perpetuate the same practices that got us into this situation in the first place – and expect different results. We need an immediate, smart, collaborative, and sustained planning process at the highest level to re-engineer the correctional system and align it with the broader criminal justice system in ways that will enhance the effectiveness of both systems and make our community safer. This planning process must begin now, with the planning and design of the new jail.

III. THE PLANNING FOR A NEW JAIL HAS NOT FOLLOWED BEST PRACTICES

As explained in *Getting It Right*, the existing plans for the new OCCC essentially perpetuate – or worse, escalate – Hawai‘i’s dysfunctional, punitive correctional system. It is beyond the scope of this document to describe in detail all of the problems associated with the existing plans and planning process. Here, however, are some of the obvious flaws in the jail design as reflected in the existing Master Plan, along with a brief comment on each problem:

◆ **Problem:** The jail planning process appears to have ignored both the *HCR 134 Task Force Report on Pretrial Reform* and the *Final Report of the HCR 85 Task Force on Prison Reform*.

Comment: The HCR 134 Task Force, which included the prosecuting attorneys and police chiefs of each county, and judges from each judicial circuit, made an in-depth study of pretrial practices that would *increase public safety* while maximizing pretrial release of those who do not pose a danger to society or a flight risk. Many of the factors driving O‘ahu’s jail population were *clearly identified* by the Task Force, which recommended a series of reforms that would *significantly reduce the jail population*.^{*} The *HCR 134 Task Force Report on Pretrial Reform* should have been a foundational document for planning the new jail, but it is not even mentioned in the Master Plan or any of the planning documents that that we have seen. It appears that it was not considered at all.

The *Final Report of the HCR 85 Task Force on Prison Reform* should also be a foundational document for planning and designing a rehabilitative jail and transitioning to a rehabilitative correctional system. The HCR 85 Task Force spent two years studying

^{*} The recommendations of the *HCR 134 Task Force on Pretrial Reform* included:

- (1) Encourage police officers to use their discretion to issue citations in lieu of arrest for low level offenses, including non-violent class C felonies;
- (2) Expand diversion initiatives to prevent the arrest of low-risk defendants;
- (3) Ensure meaningful opportunity for lawyers to address bail at initial appearance;
- (4) When bail reports are received after the defendant’s initial appearance, courts should automatically address pretrial detention or release;
- (5) Establish a court hearing reminder system for all pretrial defendants released from custody;
- (6) Implement and expand alternatives to pretrial detention;
- (7) Regularly review the jail population to identify pretrial defendants who may be appropriate for pretrial release or supervision;
- (8) Conduct risk-assessments and prepare bail reports within two working days of the defendant’s admission to a county correctional center;
- (9) Inquire and report on the defendant’s financial circumstances so that bail can be set in an amount the defendant can afford;
- (10) Permit monetary bail to be posted with the police or county correctional center at any time;
- (11) Require prompt bail hearings;
- (12) Eliminate the use of money bail for low level, non-violent misdemeanor offenses;
- (13) Create rebuttable presumptions regarding both release and detention;
- (14) Require release under the least restrictive conditions to assure the defendant’s appearance and protection of the public.

Hawai'i's correctional system, and five of the thirteen members traveled to Norway to study the highly successful Norwegian correctional system. Much of the *Final Report* is devoted to recommendations for the new jail; but like the *HCR 134 Report*, it is not mentioned in any of the State's planning documents.

Resources/Authority: *HCR 134 Task Force Report on Pretrial Reform; Final Report of the HCR 85 Task Force on Prison Reform.*

- ◆ **Problem:** There is no Mission Statement for the new jail.

Comment: A Mission Statement ensures that the people who plan the jail are in agreement on the goals and objectives for the facility and that each element of the design furthers those goals and objectives. It embodies the architectural adage “define before you design” and helps keep the design process moving in the right direction.

Resources/Authority: The National Institute of Corrections' *Jail Design Guide* (Third Edition, March 2011) recommends that one of the first steps in planning a new jail is to have a “Mission Statement” that defines the philosophy of the jail, who will be incarcerated and why, and the goals of the jail with respect to programming, rehabilitation, and reintegration into the community.

- ◆ **Problem:** The State did not use a “systems approach” to determine the number of beds that will be needed in the new jail.

Comment: A critical part of the jail planning process is to determine the number of beds that will be needed in the new facility. In 2009, the National Institute of Corrections published the *Jail Capacity Planning Guide: A Systems Approach*, to assist jurisdictions with that process. The “systems approach” is based on a body of research that challenges the notion that locking people up is the only way, or the best way, to protect the public. It makes the case for a new conceptual framework that “reasserts the primacy of treatment” and makes reducing future crime a central goal by, among other things, reserving jail for highest risk defendants and making available a full continuum of alternatives to jail so that judges have viable alternatives to incarceration. The systems approach is clearly the best practice in planning the capacity of a new jail.

The State did not use a systems approach in planning the new jail. It chose an approach that relies on historical data, population trends, and statistical models to “forecast” the number of beds that will be needed in the future. This is a highly problematic approach because, among other things, it assumes “that the status quo at the time the forecast is produced remains in place for the duration of the forecast.” That is an unrealistic assumption. As the *Jail Capacity Planning Guide* points out, “[p]olicies change, new laws are passed, and financial resources wax and wane,” and therefore “[j]ail planning must not rely solely on jail data” because “data alone can never reveal larger system issues” that may impact the demand for beds.

The failure to use a systems approach is a critical mistake that raises serious doubts about whether we need a billion-dollar jail with more than 1,000 detention beds and nearly 400 pre-release beds. The Oversight Commission has questioned the accuracy of the population forecast and we question it as well. The State needs to engage in system planning to get the capacity of the new jail *right*.

Resources/Authority: David M. Bennett and Donna Lattin, *Jail Capacity Planning Guide: A Systems Approach*, U.S. Department of Justice, National Institute of Corrections, NIC Accession No. 022722, November, 2009.

- ◆ **Problem:** The mental health units do not have a therapeutic design.

Comment: The custodial nature of the jail environment is “antithetical to the therapeutic setting required for inmates who are clinically depressed, vulnerable, suicidal, or psychotic.”⁵⁵ As design expert Dr. Marayca Lopez has pointed out, “in its current conception and design, it is far beyond the capacity of correctional facilities to address the crushing complexities of mental illness.”⁵⁶ We cannot, as Dr. Lopez says, expect individuals to become healthy in an unhealthy environment. It is therefore imperative that the State employ best practices in the way it designs the spaces to house and treat the mentally ill. At a minimum, the housing units for the mentally ill must provide a safe, supportive, therapeutic environment that meets *national standards and best practices for inpatient mental health facilities*. That means a therapeutic, trauma-informed living space, and adequate and appropriately designed examination and treatment space.

We also recognize the need for security in a forensic mental health facility and strongly recommend that the staff of the mental health units receive specialized training on the care and management of people with mental illness.

Lastly, there does not appear to be sufficient space allocated for mental health services (examination and treatment) in the Master Plan.

Resources/Authority: See endnote 55, Marayca Lopez and Laura Maiello-Reidy, *Prisons and the Mentally ill: Why Design Matters*, Penal Reform International (June 28, 2017).

- ◆ **Problem:** The design does not include ground level outdoor space for inmates to exercise, relax, and experience the natural world.

Comment: As presently designed, inmates at the new jail will live in a small, drab, hard-surfaced, climate-controlled and mostly artificially lighted environment several stories above ground, twenty-four hours a day, seven days a week. The design does not include outdoor space for inmates to walk, exercise, recreate, and experience the natural world. There is evidence that access to greenspace fosters prisoner well-being and that there are lower levels of self-harm and violence in prisons with more greenspace.

Resources/Authority: Dominique Moran, Phil I. Jones, Jacob A. Jordaan & Amy E. Porter. *Does Nature Contact in Prison Improve Well-Being? Mapping Land Cover to Identify the Effect of Greenspace on Self-Harm and Violence in Prisons in England and Wales*, *Annals of the American Association of Geographers*, 111:6, 1779-1795.

- ◆ **Problem:** The new jail does not allow contact visits.

Comment: All visitation at the new jail, except for attorney visits, will be by video conference. This is problematic because there is a large body of research showing that contact visits have beneficial effects on prisoners, and they are important to maintain family ties, particularly between parent and child. Denying detainees contact with family and support groups is punitive, unnecessary, and counterproductive. The new jail should allow and provide appropriate space for contact visits.

Resources/Authorities: Folk JB, Stuewig J, Mashek D, Tangney JP, Grossmann J. *Behind bars but connected to family: Evidence for the benefits of family contact during incarceration*. *J Fam Psychol*. 2019 Jun;33(4):453-464. doi: 10.1037/fam0000520. Epub 2019 Apr 11. PMID: 30973255; PMCID: PMC6625803.

- ◆ **Problem:** The new jail does not have an environmentally sustainable design.

Comment: For the past decade, correctional professionals, architects, and designers have been studying the impacts of correctional facilities on the environment and economy, and developing sustainability plans and green practices that will “consume fewer resources, create less pollution, and provide healthier environments for the users – inmates, staff, visitors, and administration.”⁵⁷ The new jail has not been designed with an overarching vision of sustainability, which should be a hallmark of all new buildings in Hawai‘i, and particularly correctional facilities that are 24-hour energy intensive structures. The State should go back to the drawing board and design a jail that makes maximum use of new green processes, materials, and technologies (including renewable energy) that will result in a fiscally responsible and environmentally sustainable jail.

Resources/Authority: Morris L. Thigpen, Thomas J. Beauclair, and Sherry Carroll, “The Greening of Corrections, Creating a Sustainable System,” U.S. Department of Justice, National Institute of Corrections, NIC Accession No. 024914, March 2011, iii.

- ◆ **Problem:** General Concerns

We are also generally concerned about the following:

- Overall the jail has a punitive, “custody and control” design with few rehabilitative features.
- The site is small and remote.

- The Master Plan has very little discussion of programming and it is unclear what programs will be offered, or if there will be adequate space for such programs.
- There is no courtroom for hearings and bench trials, which means that inmates will have to be transported to Circuit or District Court, a costly and time-consuming affair that is not without some risk to public safety.
- There are no classrooms for academic programs and training sessions.
- The facility is not designed for “open booking” (see page 31 *infra.*).
- The photographs in the Master Plan indicate that the design and furnishings of the cells and day rooms will be institutional rather than normative.
- The word “rehabilitation” only appears once in the two-volume Master Plan, and that is in connection with a wastewater allowance, not a person. The absence of the word “rehabilitation,” and any discussion of how the design of the jail will promote rehabilitation, strongly suggests that rehabilitation was not part of the design philosophy.

IV. MANDATES FOR CHANGE TO A REHABILITATIVE SYSTEM

A. Statutory Mandates for a Rehabilitative and Therapeutic System

Hawai‘i already has a relatively robust framework of statutes, regulations, and rules that potentially provide the foundation for a correctional system with a rehabilitative and therapeutic focus. Indeed, there are far too many statutes that mandate rehabilitative programs to list them all here. However, the following statutes are representative. Complying with these statutes would be a good first step in transitioning to a rehabilitative correctional system.

- **§ 353-6** requires a community correctional center for each county, under the direction and administration of the Director, and requires, *inter alia*, that each center shall:
 - Provide residential detention for pre-trial detainees and residential custody and correctional care for committed misdemeanants and for felons committed to indeterminate sentences;
 - Provide for committed persons, correctional services, including but not limited to, social and psychiatric-psychological evaluation, employment, counseling, social inventory, correctional programming, medical and dental services, and sex abuse education and treatment programs for persons convicted of sexual offenses or who are otherwise in need of these programs;

- Provide recreational, educational, and occupational training, and social adjustment programs for committed persons;
- Provide referrals to community educational, vocational training, employment, and work study programs; and aftercare, supervisory, and counseling services for persons released from centers.
- § 353-6.5 requires the Department to develop and make available for **women offenders'** gender-responsive, community-based programs, including a community-based work furlough program, that provide women offenders the appropriate range of opportunities to ensure that their needs are met. **This statute enumerates thirteen “program models” the Department is required to provide**, including appropriate substance abuse and mental health treatment, individualized case management, life skills development workshops, educational opportunities (including special education) and employment training, family-focused programming, and transitional or reentry support.
- § 353-7 requires the Director to maintain a high security correctional facility for the residential care, correctional services, and control of high custodial risk convicted felons or the temporary detention of high custodial risk persons awaiting trial, and also requires that the facility provide correctional services including, but not limited to, psychiatric and psychological evaluation, social inventory, correctional programming, and medical and dental services, as well as recreational, educational, and occupational training, and social adjustment programs.
- § 353-8 provides that the Director may establish and operate facilities to be known as ***conditional release centers***, either operated separately, or as part of community correctional centers, to provide housing, meals, supervision, guidance, furloughs, and other correctional programs for committed persons, and to give committed persons, in selected cases, a chance to begin adjustment to life in a free society and to serve as a test of an individual's fitness for release on parole.
- § 353-10 requires that there be within the Department an ***intake service center*** for adults in each of the counties to screen, evaluate, and classify the admission of persons to community correctional centers; and further requires the centers to provide orientation, guidance, social-medical-psychiatric-psychological diagnostic evaluation, correctional prescription program planning and security classification, and other personal and correctional services as needed for both detained and committed persons.
- § 353-13.3 provides that the Department shall be responsible for providing mental health services in community correctional centers.
- § 353E-1 establishes the statewide ***integrated sex offender treatment program*** for the treatment of committed sex offenders, to be implemented on a cooperative basis by the Department, the Hawai'i paroling authority, the Department of Health, the Department of Human Services, and any other agency that may be assigned sex offender oversight responsibilities. § 353E-1 requires, *inter alia*, that the sex offender treatment program

develop and continually update a comprehensive statewide master plan for the assessment, evaluation, treatment, and supervision of sex offenders that provides for a continuum of programs under a best practices philosophy; develop and implement a statewide, integrated system of sex offender assessment, evaluation, treatment, and supervision services and programs that reflect the goals and objectives of the master plan; identify all committed offenders who would benefit from sex offender treatment; work cooperatively to monitor and evaluate the development and implementation of sex offender assessment, evaluation, supervision, and treatment programs and services; and develop and implement standards and guidelines for the assessment, evaluation, treatment, and supervision of sex offenders.

- § 353H-2.5 establishes within the Department an *offender reentry office* to oversee the development and implementation of the comprehensive offender reentry system, and requires that the offender reentry office, *inter alia*: ensure that the present and future reentry needs of committed persons are being evaluated and met in an effective and appropriate manner; develop and implement risk needs assessment tools to properly place offenders in programs and services; match offenders to programs and services that address risks and needs identified; monitor and record progress made by offenders while participating in prescribed programs and services; and identify and make recommendations to address needs not addressed by programs and services.
- § 353H-3 requires the Department to develop a comprehensive and effective offender reentry system plan for adult offenders exiting the prison system as well as comprehensive reentry plans and curricula for individuals exiting correctional facilities in order to reduce recidivism and increase a person's successful reentry into the community. § 353H-3 goes on to provide that the reentry plans shall include, but not be limited to:

(1) *Adopting an operational philosophy that considers that offender reentry begins on the day an offender enters the correctional system.* Each offender entering the system shall be assessed to determine the offender's needs in order to assist the individual offender with developing the skills necessary to be successful in the community;

(2) Providing appropriate programs, including, but not limited to, education, substance abuse treatment, cognitive skills development, vocational and employment training, and other programs that help to meet the assessed needs of each individual;

(3) Developing a comprehensive network of transitional programs to address the needs of individuals exiting the correctional system;

(4) Ensuring that all reentry programs are gender-responsive;

(5) Issuing requests for proposals from community-based nonprofit programs with experience with offenders in the area of reentry; and

(6) Instituting model reentry programs for adult offenders.

- **§ 354D-1** includes a legislative finding that the number and types of programs operated by the Department shall be expanded to provide a comprehensive work program for inmates, and specifies that the purpose of **Chapter 354D** is to:

(1) Establish the correctional industries program to allow expanded industries programs to generate revenue to sustain its operation and allow for capital investment. The program should be structured to allow for the increased involvement of correctional industries in providing specific training skills for offenders that increase their employment prospects after release;

(2) Develop industries that provide a maximum level of work for all qualified, able-bodied inmates;

(3) Provide an environment for the operation of correctional industries similar to that of a private business operation;

(4) Encourage cooperative training ventures between the correctional industries program and the private sector; and

(5) Provide for low-cost construction, renovation, and repairs of facilities, grounds, furniture, vehicles, and equipment for private nonprofit social service, education, and health agencies and programs.

- **§ 354D-4** provides that the administrator of the correctional industries program, acting under the supervision of the Director or the Director's designee, shall:

(1) Develop programs generating revenue that best sustains their operation and allows for capital investment, and reimburses the general fund, when possible, for the expense of correctional services;

(2) Develop programs providing the maximum level of work and training opportunities for qualified, able-bodied inmates;

(3) Develop programs assuming responsibility for training qualified, appropriately screened inmates in applicable work and specific training skills that increase their employment prospects after release;

(4) Develop programs in which inmates can learn skills used in the construction and other industries, while providing low-cost construction, renovation, and repairs of facilities, grounds, furniture, vehicles, and equipment for private, nonprofit social services, health, or education agencies and programs;”

B. The Hawai‘i Correctional System Oversight Commission’s Mandate for Change

Unfortunately, the forgoing statutes have been largely ignored, and an antiquated and punitive correctional system has persisted. The ground began to shift, however, with the foundational work of the House Concurrent Resolution 85 Task Force on Prison Reform, which in turn led to the creation of the Hawai‘i Correctional System Oversight Commission.⁵⁸ Pursuant to section 353L-3 of the Hawai‘i revised Statutes, the Oversight Commission’s broad statutory mandate covers most aspects of meaningful correctional system reform:

(a) The commission shall meet with the oversight coordinator not less than once each quarter to make recommendations and set policy, receive reports from the oversight coordinator, and transact other business properly brought before the commission.

(b) The commission shall:

(1) Oversee the State's correctional system and have jurisdiction over investigating complaints at correctional facilities and facilitating a correctional system transition to a rehabilitative and therapeutic model;

(2) Establish maximum inmate population limits for each correctional facility and formulate policies and procedures to prevent the inmate population from exceeding the capacity of each correctional facility;

(3) Work with the department of public safety in monitoring and reviewing the comprehensive offender reentry program, including facility educational and treatment programs, rehabilitative services, work furloughs, and the Hawai‘i paroling authority's oversight of parolees. The commission may make recommendations to the department of public safety, the Hawai‘i paroling authority, and the legislature regarding reentry and parole services; and

(4) Ensure that the comprehensive offender reentry system under chapter 353H is working properly to provide programs and services that result in the timely release of inmates on parole when the minimum terms have been served instead of delaying the release for lack of programs and services.

To achieve these ends, the commission shall authorize the oversight coordinator to adopt rules in accordance with chapter 91.⁵⁹

As noted previously, the Hawai‘i correctional system takes a warehousing approach to corrections, which translates in practice to a purely punitive model of corrections. The establishment of the Oversight Commission reflects the Legislature’s understanding that Hawai‘i’s correctional system needs to transition from a punitive model of corrections to a rehabilitative and therapeutic model. Indeed, the Oversight Commission’s broad statutory

mandate includes the requirement that it “facilitat[e] a correctional system transition to a rehabilitative and therapeutic model.”⁶⁰

The planning process recommended in Section V of this paper is consistent with and supportive of the Oversight Commission’s statutory mandate to reduce Hawai‘i’s prison population, to move the State’s correctional system towards a rehabilitative and therapeutic model, and to improve reentry programs and services.

C. The National Tide of Change

Hawai‘i is not alone in recognizing that mass incarceration in punitive facilities is unnecessarily costly, ineffective and often counterproductive, profoundly unfair and racially discriminatory, and socially destructive. The American Bar Association’s (ABA’s) House of Delegates took aim at mass incarceration in at their 2022 Annual Meeting in Chicago.

Resolution 604. ABA Resolution 604 adopts the ABA’s Ten Principles on Reducing Mass Incarceration and urges all legislative and governmental bodies to implement policies consistent with these guidelines.⁶¹ According to the Working Group on Building Public Trust in the American Justice System, which sponsored the resolution, the ten principles build on existing ABA policies related to sentencing, pretrial detention, and court fines and fees; and they outline crucial steps that jurisdictions can take to fully reform their criminal legal systems.⁶²

In moving the resolution, Robert Weiner, the chair of the working group, pointed out that the United States has less than 5% of the world’s population but nearly 25% of its incarcerated individuals.⁶³ Weiner added that those in U.S. prisons and jails are disproportionately people of color, citing statistics showing that one of every three Black men born in 2021 can expect to be incarcerated at some point in their lives.⁶⁴ He noted that this disrupts families, perpetuates poverty, leads to discrimination in hiring and hinders upward mobility.⁶⁵

Here, then, are the ABA’s Ten Principles on Reducing Mass Incarceration:

- Limit the use of pretrial detention.
- Increase the use of diversion programs and other alternatives to prosecution and incarceration.
- Abolish mandatory minimum sentences.
- Expand the use of probation, community release and other alternatives to incarceration, and create the fewest restrictions possible while promoting rehabilitation and protecting public safety.

- End incarceration for the failure to pay fines or fees without first holding an ability-to-pay hearing and finding that a failure to pay was willful.
- Adopt “second look” policies that require regular review and, if appropriate, reduction of lengthy sentences.
- Broaden opportunities for incarcerated individuals to reduce their sentences for positive behavior or completing educational, training or rehabilitative programs.
- Increase opportunities for incarcerated individuals to obtain compassionate release.
- Evaluate the effectiveness of prosecutors based on their impact on public safety and not their number of convictions.
- Evaluate the effectiveness of probation and parole officers based on their success in helping probationers and parolees and not their revocation rates.⁶⁶

Mark Schickman, a Section of Civil Rights and Social Justice delegate to the House of Delegates and a native of California, spoke in favor of the resolution. He mentioned the city of San Francisco, which is known as one of the most liberal cities in the country but recently recalled progressive District Attorney Chesa Boudin over concerns about rising crime rates:

“We got into a situation where our communities want us to do something about it, and the simple answer is put people in jail,” Schickman said. “But at the same time, America cannot be known as the biggest jailer in the world. It’s not an either-or issue, and if you treat it as an either-or issue, there is no good solution. It needs to be dealt with through these 10 principles, [which are] reasonable ways that we as a society can deal with the issues.”⁶⁷

The ABA resolutions are part of a nationwide trend to rethink how we use our jails and prisons. For example, when the MacArthur Foundation announced a \$75 million initiative to challenge the way America thinks about and uses its jails, it received grant applications from more than 200 jurisdictions in 45 states and territories.⁶⁸ The 20 cities that received grants demonstrated a variety of effective ways to keep people out of jail who did not belong there and to address racial disparities in their justice systems.⁶⁹ Overall, the average drop in daily jail population for participating cities and counties was 22%, and the cities are safer, fairer, and healthier as a result.⁷⁰

D. Resources to Support Change

In 1974, the National Institute of Corrections was established within the U.S. Bureau of Prisons through an act of Congress.⁷¹ The legislation creating the NIC included the following prescription of authority under Title 18 of the U.S. Code, which reflects the enormous resources now available through the Institute:

§ 4352. Authority of Institute; time; records of recipients; access; scope of section

(a) In addition to the other powers, express and implied, the National Institute of Corrections shall have authority:

(1) to receive from or make grants to and enter into contracts with Federal, State, tribal, and general units of local government, public and private agencies, educational institutions, organizations, and individuals to carry out the purposes of this chapter;

(2) to serve as a clearinghouse and information center for the collection, preparation, and dissemination of information on corrections, including, but not limited to, programs for prevention of crime and recidivism, training of corrections personnel, and rehabilitation and treatment of criminal and juvenile offenders;

(3) to assist and serve in a consulting capacity to Federal, State, tribal, and local courts, departments, and agencies in the development, maintenance, and coordination of programs, facilities, and services, training, treatment, and rehabilitation with respect to criminal and juvenile offenders;

(4) to encourage and assist Federal, State, tribal, and local government programs and services, and programs and services of other public and private agencies, institutions, and organizations in their efforts to develop and implement improved corrections programs;

(5) to devise and conduct, in various geographical locations, seminars, workshops, and training programs for law enforcement officers, judges, and judicial personnel, probation and parole personnel, correctional personnel, welfare workers, and other persons, including lay ex-offenders, and paraprofessional personnel, connected with the treatment and rehabilitation of criminal and juvenile offenders;

(6) to develop technical training teams to aid in the development of seminars, workshops, and training programs within the several States and tribal communities, and with the State, tribal, and local agencies which work with prisoners, parolees, probationers, and other offenders;

- (7) to conduct, encourage, and coordinate research relating to corrections, including the causes, prevention, diagnosis, and treatment of criminal offenders;
- (8) to formulate and disseminate correctional policy, goals, standards, and recommendations for Federal, State, tribal, and local correctional agencies, organizations, institutions, and personnel;
- (9) to conduct evaluation programs which study the effectiveness of new approaches, techniques, systems, programs, and devices employed to improve the corrections system;
- (10) to receive from any Federal department or agency such statistics, data, program reports, and other material as the Institute deems necessary to carry out its functions. Each such department or agency is authorized to cooperate with the Institute and shall, to the maximum extent practicable, consult with and furnish information to the Institute;
- (11) to arrange with and reimburse the heads of Federal departments and agencies for the use of personnel, facilities, or equipment of such departments and agencies;
- (12) to confer with and avail itself of the assistance, services, records, and facilities of State, tribal, and local governments or other public or private agencies, organizations, or individuals;
- (13) to enter into contracts with public or private agencies, organizations, or individuals, for the performance of any of the functions of the Institute; and
- (14) to procure the services of experts and consultants in accordance with section 3109 of title 5 of the United States Code, at rates of compensation not to exceed the daily equivalent of the rate authorized for GS-18 by section 5332 of title 5 of the United States Code. 18 USC §4352.

During the four-plus decades since its founding, the NIC has evolved into an extraordinary clearinghouse and repository for information related to almost all aspects of corrections. In addition to the vast amount of information readily accessible through the NIC website, the NIC offers direct assistance and support with respect to many issues common to corrections.⁷² Although there are numerous materials available through the NIC that are directly relevant to the planning and design of a jail, there are two publications that stand out as especially relevant to the planning and design of Hawai‘i’s new jail: the *NIC Jail Design Guide*⁷³ and the *NIC Jail Capacity Planning Guide: A Systems Approach*.⁷⁴ Both of these documents are freely available from the NIC website.

V. THE PATH FORWARD – THE NIC JAIL DESIGN GUIDE

The *NIC Jail Design Guide*, Third Edition, was developed to provide information about basic concepts and issues surrounding jail design. It is a 325-page document that provides an evidence-based, step-by-step guide to best practices for planning and designing a jail that fits a jurisdiction's unique needs:

The *NIC Jail Design Guide* discusses current correctional standards and architectural principles that are important to building a cost-efficient jail to meet a locality's particular needs. While plainly written, it is sufficiently technical and detailed to guide local officials, architects, and planners who may be unfamiliar with jail design, construction, and operational issues. It does not, however, include sample floor plans, as that would imply the recommendation of model solutions to jail planning and design issues. Each jurisdiction needs to craft a jail design to meet its unique situation and community needs.⁷⁵

The *Jail Design Guide* includes numerous references to other resources and materials that relate to jail planning and design, including other materials prepared by the NIC. The following references to the *NIC Jail Design Guide* are provided to illustrate best practices for the planning and design of a jail, and to demonstrate how inadequate and flawed the existing planning process has been from the outset with respect to the new OCCC.

The fundamental premise of the *NIC Jail Design Guide* is that “form follows function,” meaning that good jail design is measured by the degree to which the facility conforms to and serves the needs and activities of those who use it.⁷⁶ Accordingly, the first phase of the planning process for a new jail should be focused on determining the intended functions of the jail. The *Jail Design Guide* recommends that this take place during a four-phase “**Predesign Planning**” process.⁷⁷ This Predesign Planning process begins with “Phase 1,” which includes “a hard look at the criminal justice system as a whole,” *in order to determine how the contemplated jail fits into that system*.⁷⁸ The Predesign Planning then focuses on the following:

- Phase 2: “Needs Assessment,” which contemplates the following tasks:
 - Developing a policy group.
 - Reviewing applicable standards and legal requirements.
 - Developing the system mission statement and goals.
 - Evaluating the current criminal justice system and policies.
 - Evaluating the existing facility for standards compliance.
 - Evaluating existing alternative programs.
 - Evaluating current staffing levels against the staffing levels that are needed.
 - Identifying options, including:
 - Evaluating changes to policies and practices in the criminal justice system.

- Evaluating the facility to determine whether renovation/expansion is needed.
 - Evaluating non-facility alternative programs.
 - Appointing a transition team leader who will be involved in all aspects of the project.
 - Developing cost estimates for the project and staffing/operational costs for the first checkpoint for the project.
 - Developing and producing a needs assessment report and a determination of inmate capacity by year.
 - Starting to develop support for the project in the community.⁷⁹
- Phase 3: “Facility Program Development,” which contemplates the following tasks:
 - Developing a functional program, which includes:
 - Developing operational principles and functional scenarios.
 - Reviewing applicable state and national standards.
 - Developing a staffing plan for the new facility.
 - Developing a space program, which includes:
 - Identifying square footage needs for the new facility.
 - Developing adjacency diagrams.
 - Analyzing design criteria.⁸⁰
 - Phase 4: “Project Definition and Implementation Plan,” which contemplates the following tasks:
 - Evaluating facility options (new construction versus renovation/expansion).
 - Developing a conceptual design for the new facility.
 - Developing a cost-benefit analysis and lifecycle costs.
 - Conducting user and owner reviews.⁸¹

The NIC *Jail Design Guide* emphasizes the importance of two of the tasks included in Phase 2, the “Needs Assessment.” First, the *Jail Design Guide* recommends that the “Mission Statement” for the project define many of the fundamental aspects of the facility, including:

- The legal mandates for the jail.
- The entities responsible for its operation and funding.
- Who will be incarcerated in the jail and why.
- Responsibilities for safety, security, and service to inmates, staff, and the community.
- The correctional philosophy of the jail with respect to both pretrial and sentenced inmates, including programming, goals of punishment, reintegration into the community, rehabilitation, and so forth.⁸²

Second, the *Jail Design Guide* emphasizes the importance of “Establishing Bed Capacity,” which is integrally related to the Mission Statement task of determining “who will be incarcerated in the jail and why.” As the Guide notes, “[t]he total number of beds drives facility development and operational costs more than any other factor.”⁸³ Among the multiple issues that should be considered when establishing future bed needs are the following:

- Projections of data other than jail average daily population (e.g., bookings, criminal case load, arrests, average length of stay).
- The condition of the local economy and community.
- Local and regional population growth and demographic changes.
- Use of alternatives to incarceration, such as releasing pretrial inmates on their own recognizance or creating a home arrest program (electronically monitored or otherwise) for sentenced inmates. Streamlined criminal justice case processing that results in shorter pretrial lengths of stay and thus a lower jail population.
- Changes in law that could measurably increase or decrease the jail population, such as a state mandate that nonviolent felons serve jail time rather than a state prison sentence.
- Inmate classification and separation requirements
- Daily, monthly, and annual deviations from the projected trend line to examine population peaks⁸⁴

The NIC *Jail Design Guide* goes on to recommend that a bed-capacity-setting process include capacity projections broken down: (1) by year (for 10–20 years into the future); and (2) by types of beds needed (e.g., male/female, security or classification type, special needs, program or reentry), which will determine the number and size of the jail’s living units.⁸⁵ The Guide also notes that this “capacity-setting process may recommend alternative policies and practices for the criminal justice system to limit the growth in the number of inmates”⁸⁶

As mentioned, the resources available from the NIC include another highly relevant planning document entitled *Jail Capacity Planning Guide*. This is an 80-page document that is predicated on the assumption that “it is essential that jurisdictions adopt comprehensive, effective strategies to address the problem of crowding in our nation’s jails.”⁸⁷ To this end, the *Jail Capacity Planning Guide* describes its purpose as follows:

This guide describes key population management strategies that have as their foundation the necessity of holding offenders accountable while making judicious use of detention resources. This guide also makes the case for the importance of identifying offenders who pose higher risks and targeting them for the most intensive correctional resources, making available a full continuum of alternatives to jail, relying on evidence-based sanctions and quality treatments, and building in transition and stepdown options from jails.⁸⁸

The *Jail Capacity Planning Guide* provides a deep dive into the difficult task of establishing bed capacity for a new jail, and provides an extremely helpful complement to the *NIC Jail Design*

Guide. It calls for a “systems approach” to planning which recognizes that the number of beds needed in a new jail is determined by policies and practices in the larger criminal justice system, and that the only way to successfully manage the jail population and avoid overcrowding is to address and manage those policies and practices:

Jails are part of a complex criminal justice system whose policies and practices directly influence total bed need. As such, jail planning cannot be done in a vacuum. Any consideration of future jail bed need must take place within the context of a discussion about how to manage the larger criminal justice system more effectively. ***Jail planning and system planning are one and the same.***

Among the factors that determine the demand for jail beds are:

- Booking versus cite and release policies of the police department
- The availability of pre-booking alternatives (detoxification and crisis centers)
- Pretrial supervision, monitoring and tracking policies
- Arrest warrant policies
- Access to early pretrial risk assessment information
- Early case resolution procedures
- Jail length of stay
- Case processing time
- Early appointment of counsel
- Deferred sentencing options
- Bail policies and bail bond review procedures
- Sentencing mandates
- The availability of alternatives to incarceration (treatment, work release, etc.)

Communities that proactively address the policies and practices driving their jail population can avoid overcrowding and the multitude of problems it entails. Communities that ignore what is happening in the larger justice system quickly fill up their jails, and that creates a demand for more beds and triggers a vicious cycle of building new and larger jails. This cycle is documented in the Vera Justice Institute’s study *Broken Ground: Why America Keeps Building More Jails and What It Can Do Instead*.⁸⁹ Indeed, the *Jail Capacity Planning Guide* specifically warns against a planning process that relies solely on jail data: “Jail planning must not rely solely on jail data. To do so is to institutionalize current practices by assuming the existing system is operating in an optimal fashion. *Jail data alone can never reveal larger system issues.*”⁹⁰

We are at a loss to explain why the State did not follow best practices and engage in system planning; but irrespective of the reason, we believe that the State does not have an adequate and reliable population forecast for the new jail. We recommend that the State disregard the existing jail population forecast and immediately begin a system planning process.

Jail capacity planning is a critical aspect of the Predesign Planning process and is intended to provide sufficient information and assumptions for reasonable conclusions to be reached with respect to the general magnitude and character of the facility. Once the capacity and character are determined, the *Jail Design Guide* recommends that the following major building considerations be addressed as a final part of the Predesign Planning process:

- Confirming the inmate classification/separation system established during capacity setting.
- Determining the appropriate occupancy level for each classification of inmate (i.e., single occupancy cell, double-occupancy cell, multiple-occupancy cell, dormitory).
- Establishing the method(s) by which inmate surveillance/supervision will occur in housing areas.
- Estimating staffing needs relative to different design and management concepts.
- Identifying the range of non-housing functions in the jail that must be supported by space (e.g., booking, medical services, programs, administration).
- Ascertaining which services (e.g., food, laundry) can be obtained elsewhere or to what outside agencies the jail might provide services through expanded facilities.
- Deciding the degree of expansion to be accommodated.⁹¹

After the Predesign Planning process has been completed, the actual design process can begin:

When predesign planning is complete, it is time for the architect and the client to undertake the design process. This process starts with preliminary schematic designs of a very basic nature. These initial designs explore a series of major considerations that will fundamentally influence the direction of the design well before individual spaces are drawn. They also allow for a preliminary estimate of staffing needs.⁹²

Hundreds of pages of the *Jail Design Guide* are devoted to the process of translating the findings and conclusions reached through the Predesign Planning process into an architectural design in which form truly follows function. The recommendations and action plan that follows in Section VIII are focused only on the Predesign Planning process, which encompasses the scope of work done to date in connection with the planning of the new jail. In pursuing these recommendations, the tremendous resources of the NIC are readily accessible to provide guidance, including best practices. First, however, we will provide a brief overview and description of a recently constructed facility that utilized many of the resources described in this paper in designing and constructing a rehabilitative jail.

VI. DESIGNING FOR REHABILITATION: THE LAS COLINAS DETENTION AND REENTRY FACILITY

The Las Colinas Detention and Reentry Facility in Santee, California, is the women's jail for San Diego County. It opened in 2014 and was designed by kmd+ and HMC Architects. The design

team's goal was to create a facility that has a normative environment and fosters interaction between inmates and staff. The facility cost \$280 million. It can house up to 1,280 women and is situated on a 45-acre parcel near a residential neighborhood.⁹³

No one from our working group has visited Las Colinas; therefore, we cannot comment on for how it is operated or whether it achieves the rehabilitative goals for which it was designed. We express no opinion on whether it is a “good or bad” jail. We discuss it here simply as an architectural model to stimulate thinking about designs that focus on creating a normative, humane, and rehabilitative environment.

The landscaping at Los Colinas creates a sustainable and restorative environment inspired by the site's natural surroundings and history.⁹⁴ Native trees and shrubs planted along the perimeter of the facility act as a screen and provide a natural wildlife corridor.⁹⁵ Special landscape features include integrated shade structures, bioretention gardens, a greenhouse that is part of the facility's horticultural training program, an amphitheater for outdoor events, and a sports court.⁹⁶



The campus is divided into four zones – administration, communal, programmatic, and housing – connected by a central quad as on college campuses.⁹⁷ Prisoners move among the zones as required by their daily activities.

There are 26 buildings on the campus, each with a specific function.⁹⁸ They include an administration and visitation building, detainee housing, a clinic, an infirmary, a library, a religious service building, an intake building, training facilities, educational buildings, a food services building, a maintenance building, and others.⁹⁹



Low security inmates are housed in open cubicles with low walls

The housing units are designed to accommodate low, medium, and high security detainees. Low security detainees are housed in cubicles that have a bed, desk and a large window to allow natural light.¹⁰⁰ The medium and high security housing are each designed to be as normative as possible for their level of security.¹⁰¹

Interiors throughout the facility use soft colors, normal looking furniture selected for its aesthetics, safety, and durability, acoustics that dampen sound, and custom designed lighting.¹⁰²

Las Colinas uses a “step down” security classification system in which new detainees are assigned an initial level of security and can gradually progress to lower levels. At each lower level there is greater independence and a more normative environment.

An innovative feature of Las Colinas is “open booking,” an intake system in which detainees are not put in holding cells but are seated in an open area that has comfortable furniture, rest rooms, and telephones. They remain in the seating areas or “waiting room” until they are called to medical screening, photographing, or other areas of intake within the booking process. Holding cells are only used for detainees whose actions or security level require them to be separated from other detainees.¹⁰³

Las Colinas also uses “direct supervision” in which staff are stationed within the housing unit instead of in video monitoring stations that are set apart from the detainees.¹⁰⁴ This allows greater interaction and communication between detainees and staff which can resolve problems and conflicts before they become serious incidents.¹⁰⁵



Day room. The open guard station is a feature of “direct security”

Both academic and vocational educational programs are available at Las Colinas.¹⁰⁶ It is LEED Gold Certified and has received over a dozen design awards.¹⁰⁷

VII. GOOD FACILITY DESIGN MUST BE SUPPORTED BY PROPER STAFF TRAINING

Good facility design alone is not enough. The best designed jail can easily be undermined or sabotaged by staff who ignore or resist elements of functionality which they do not understand or accept. It is essential that, at every level of authority within the correctional system, the staff be trained in the rehabilitative model of corrections. Realistically, this will require a substantial, sustained commitment of resources to recruit, educate and train personnel, leading to the development of a more professional and better compensated staff to complement and support, rather than undercut, the functionality designed into the new jail.

Four years ago, the HCR 85 Task Force on Prison Reform recommended that the State create an “academy” to provide staff with the knowledge and skill needed to become an integral part of a rehabilitative correctional facility. The curriculum would include the philosophy and principles of rehabilitation, the role of the correctional professional in promoting rehabilitation, conflict resolution, counseling, cognitive behavior intervention, collaborative casework, the implementation of evidence-based programs, and other relevant subjects.

The State should begin work on the academy immediately so that there are staff who are trained and ready to work in a rehabilitative environment when the new jail opens.

VIII. RECOMMENDATIONS AND ACTION PLAN

For the reasons set forth above, and in *Getting It Right*, we submit the following recommendations and action plan for consideration:

- 1) The planning and design process for the new jail should begin anew, but with the understanding that the planning and design work done to date may be considered as part of the new process.
 - a) The Pulitzer Bogard Population Forecast Report included in the Master Plan Report is inadequate and misleading as the basis for planning a new facility because it does not accurately describe the future population, and therefore should be rejected.
 - b) The existing AHL-Louis Berger – Integrus draft Master Plan Report for the new OCCC is fatally flawed, and should be rejected.

- 2) The proposed public-private partnership model is not conducive to a public works project such as building the new OCCC and should be rejected. The state should use general obligation bonds to finance the jail and work to make the design and operation of the facility as efficient as possible while meeting statutory and constitutional requirements.
- 3) The planning and design process for the new jail should generally follow the approach outlined in the *NIC Jail Design Guide* and the *NIC Jail Capacity Planning Guide*. Consonant with the recommendations in the *Jail Design Guide*, the Predesign Planning process should be distinguished and separated from the actual design process.
- 4) The planning and design process for the new jail should also draw on other NIC resources, including the *NIC The Greening of Corrections: Creating a Sustainable System*, to increase efficiency, reduce operating costs, and ensure that the new facility is in line with the State's energy and environmental policies and goals.
- 5) Due to the scope and complexity of the Predesign Planning process, a qualified correctional planning consultant or professional project manager will be essential.
- 6) The Oversight Commission and Oversight Coordinator should convene an Advisory Committee to provide input and recommendations regarding the planning and design of the new jail, and the process for selecting a qualified correctional planning consultant. The Advisory Committee should have an equitable balance of people from the public, private, and government sectors and should include persons with prior involvement with the criminal justice system and members of the community who have demonstrated a commitment to improving the criminal justice system and addressing the needs of incarcerated persons. Without limitation to the foregoing, the Advisory Committee should include representatives of the Native Hawaiian community, such as OHA and other similarly experienced entities or individuals.
- 7) The Oversight Commission and Oversight Coordinator should prepare a "scope of work" that will define a comprehensive scope of services, and a management plan and process, to direct and govern the work, duties and responsibilities of the correctional planning consultant or project manager. This scope of work should include the requirement that the planning and design process generally follow the approach outlined in the *NIC Jail Design Guide* and the *NIC Jail Capacity Planning Guide*, and should also include provisions that reflect the following foundational principles:
 - a) The existing DPS system operating policies and procedures are badly outdated and misaligned with contemporary evidence-based best practices. The planning and design of

the new jail provides a singular opportunity to implement a rehabilitative and therapeutic approach to corrections.

- b) A rehabilitative and therapeutic model for the new jail should guide the comprehensive inventory, assessment, planning and design of *every aspect and component of the correctional system as it effects the jail*, including: (1) diversion programs and services and other “off-ramps” that largely determine who will be incarcerated in the new jail; (2) the programs and services to be made available to those housed in the new jail; and (3) the programs and services designed to assist prisoners as they reenter free society.
 - c) A rehabilitative and therapeutic model for the new jail should adopt a “medical model” with respect to the conditions of confinement, and the programs and services to be made available within the correctional system. The medical model for corrections is grounded on the recognition that many, if not most, of the people who enter the correctional system have underlying problems or issues that have contributed to their arrest. From the time a person initially becomes involved with the correctional system, the medical model focuses on diagnosing and treating any root problems that are determined to have contributed substantially to behavior that resulted in the arrest.
 - d) A rehabilitative and therapeutic model for the new jail requires that the jail staff at all levels be trained to perform their jobs competently and with a high degree of professionalism. Proper training of jail staff will require a substantial commitment of resources to educate, certify, and compensate staff appropriately.
 - e) The planning and design process should make every effort to ensure that the programs and services mandated by Hawai‘i’s statutes are provided.
- 8) The Oversight Commission and Oversight Coordinator should prepare a budget for completing the Predesign Planning process, as outlined in the *NIC Jail Design Guide*, and this budget should be submitted to the Legislature for funding.

CONCLUSION

Hawai‘i is at a crossroad. We can build the large, expensive and punitive jail described in the Master Plan, knowing that it will simply perpetuate a broken correctional system, or we can build a transformative jail based on best practices. If we are genuinely interested in reducing our unacceptably high rate of recidivism, we should not miss this once-in-a-generation opportunity to move our correctional system in the direction of rehabilitation.

As described in this document, we believe that the Oversight Commission and the Oversight Coordinator have both the mandate and the expertise to “oversee” the planning for the new jail.

We recommend that the Oversight Commission and Oversight Coordinator work with an Advisory Committee to develop a “scope of work,” guided by best practices, to be used to retain a qualified correctional planning consultant to work with the Oversight Commission to manage the planning and design process.

Although the Predesign Planning process must start over again, *that does not mean we have to start from scratch*. Much of the work that has already been done – such as the project background, site selection, site analysis, data collection, and other basic planning work – can be used going forward. In addition, the groundwork done by the HRC 134 Task Force and HRC 85 Task Force will facilitate and expedite the *system planning process* and the development of a rehabilitative framework for the new jail.

It is not too late to change course. We owe it to the people of Hawai‘i to *get it right*.

Mahalo for your consideration of these important issues. For any comments or questions, please contact Bob Merce at mercer001@hawaii.rr.com.

Sincerely,

The Correctional Reform Working Group:

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Hayley Cheng, Esq.
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Pablo Stewart, M.D.
Justice Michael Wilson

Endnotes

¹ The Ige Administration requested an appropriation of \$15 million to continue planning for the replacement of the O‘ahu Community Correctional Center (OCCC). See State of Hawai‘i FY 2023 Executive Supplemental Budget in Brief (December, 2021) p. xvi. Accessed August 31, 2022 <https://budget.hawaii.gov/wp-content/uploads/2021/12/Budget-in-Brief-FY-23-BIB.Mn5.pdf>. The appropriation was not approved.

² Act 179 Haw. Sess. L. 2019, codified as Hawai‘i Revised Statutes (HRS) §353L-3(b) (2019).

³ Hawai‘i Correctional System Oversight Commission, “2020 Annual Report” (December 2020). Accessed August 21, 2022 <https://ag.hawaii.gov/hawaii-correctional-system-oversight-commission/2020-meeting-agendas/>.

⁴ Hawai‘i Correctional System Oversight Commission, “2021 Annual Report” (April 2022). Accessed August 31, 2022. <https://ag.hawaii.gov/wp-content/uploads/2022/04/HCSOC-2021-Annual-Report.pdf>.

⁵ Meeting of the Hawai‘i Correctional System Oversight Commission, December 16, 2021 (meeting video at 1:08). Accessed August 31, 2022. <https://www.youtube.com/watch?v=UUvIpvIRJek>. See also State of Hawai‘i, Department of the Attorney General, Hawai‘i Correctional System Oversight Commission, “Merce Report.” Accessed August 31, 2022. <https://ag.hawaii.gov/hawaii-correctional-system-oversight-commission/2022-meeting-agendas/>. (Please note that the title “Merce Report” is interchangeable with “Getting it Right: Better Ideas for a New Jail,” a full copy of which is attached as the Appendix.)

⁶ Letter, Mark K. Patterson, Chair, Hawai‘i Correctional System Oversight Commission, to The Honorable Sylvia Luke, The Honorable Ty J.K. Cullen, The Honorable Donovan M. Delacruz, and the Honorable Gilbert S.C. Keith-Agaran, January 3, 2021, p. 2-3. (See Attachment 1, Hawai‘i Correctional System Oversight Commission, “2021 Annual Report” (April 2022)). Accessed August 31, 2022. <https://ag.hawaii.gov/wp-content/uploads/2022/04/HCSOC-2021-Annual-Report.pdf>.

⁷ Letter, note 6 supra.

⁸ Letter, note 6 supra. p. 2, quoting “Merce Report,” p. 2. See also note 5 supra.

⁹ The U.S. Bureau of Justice Statistics began tracking Hawai‘i’s prison population in 1959 when Hawai‘i became a State. The yearend prison population for Hawai‘i from 1959 to 1986 can be found in the publication “Historical Statistics on Prisoners in State and Federal Institutions Yearend 1925-86,” by Patrick A. Langan, John V. Fundis, Lawrence A. Greenfeld, and Victoria W. Schneider, Bureau of Justice Statistics, NCJ -111098 (Washington, D.C.: May 1988). <https://www.ncjrs.gov/pdffiles1/digitization/111098ncjrs.pdf>. The authors note on page 2 that the

average annual increase in Hawai‘i’s prison population was the second largest in the nation “during the 1980’s.”

Regarding “tough on crime” laws as fueling the rise of prison populations in Hawai‘i and elsewhere in United State see generally National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, The National Academies Press (Washington, D.C. 2014). See also Meda Chesney-Lind and Robert Merce, "Toward a Smaller, Smarter Correctional System for Hawai‘i" in *The Value of Hawai‘i 3: Huliha, the Turning*, Noelani Goodyear-Ka‘ōpua, Craig Howes, Jonathan Kay Kamakawiwo‘ole Osorio, Aiko Yamashiro, Paige Rasmussen and Craig Howes (ed.) University of Hawai‘i Press (2021) p. 115.

¹⁰ Bureau of Justice Statistics, note 9 supra.

¹¹ Creating Better Outcomes, Safer Communities,” Final Report of the House Concurrent Resolution 85 Task Force on Prison Reform to the Hawai‘i Legislature, 2019 Regular Session (December 2017). Accessed August 31, 2022. https://www.courts.state.hi.us/wp-content/uploads/2018/12/HCR-85_task_force_final_report.pdf.

¹² The number of Hawai‘i prisoners incarcerated by CoreCivic at the Saguaro Correctional Center in Arizona is reported in the Hawaii Department of Public Safety’s “End of Month Population Report,” July 31, 2022. Accessed August 31, 2022. <https://dps.hawaii.gov/wp-content/uploads/2022/08/Pop-Reports-EOM-2022-07-31.pdf>.

The five states with more than 20% of their prisoners in privately operated facilities as of 2018 are New Mexico, Montana, Tennessee, Oklahoma, and Hawai‘i. See Bureau of Justice Statistics, “Prisoners in 2016,” by E. Ann Carson, NCJ 251149 (Washington, D.C.: January 2018, revised August 7, 2018): 14. Accessed August 31, 2022. <https://bjs.ojp.gov/content/pub/pdf/p16.pdf>

¹³ Hawai‘i’s incarcerated population was 727 in 1978 and 4,209 on July 31, 2022, a 479% increase. See Creating Better Outcomes, Safer Communities, supra note 11, p. 1, and Hawai‘i Department of Public Safety End of Month Population Report, supra. note 12.

Hawai‘i’s general population was 932,000 in 1978 and 1,441,000 in 2021, a 55% increase. See Macrotrends, “Hawaii Population 1950-2021.” Accessed August 31, 2022. <https://www.macrotrends.net/states/hawaii/population>.

¹⁴ The incarceration rate was calculated based on the Department of Public Safety’s July 31, 2022 End of Month Population Report (4,209 prisoners) and a Hawai‘i population of 1,441,000 See also note 13 supra.

The incarceration rate of countries around the world is compiled by Institute for Crime & Justice Policy Research (ICPR) at Birkbeck University, London. For the latest data see Helen Fair and Roy Walmsley, “World Prison Population List,” World Population Brief (Thirteenth Edition, October, 2021) pp. 11-13. Accessed August 31, 2022. https://www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_13th_edition.pdf.

¹⁵ Norway has 3,032 prisoners (including pretrial detainees and remand prisoners) compared to Hawai‘i’s 4,209 prisoners. World Prison Brief, World Prison Brief Data, “Norway” at <https://www.prisonstudies.org/country/norway>. Accessed September 20, 2022.

Norway’s population as of 2021 was 5,466,000 compared to Hawai‘i’s 2021 population of 1,440,000. See Statistics Times, “Norway Demographs” at <https://statisticstimes.com/demographics/country/norway-demographics.php> and Hawai‘i population, supra. note 13.

¹⁶ A comparison of Hawai‘i’s incarceration rate with the rates of countries around the world can be found at: World Prison Brief, “Prison Population Rate, Entire World -Highest to Lowest.” Accessed August 31, 2022. https://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All.

¹⁷ Department of Budget and Finance, FB 2021-2023 Executive Biennium Budget, Budget in Brief, December 21, 2020, p. 110. Accessed September 5, 2022. <https://budget.hawaii.gov/wp-content/uploads/2020/12/FB-21-23-BIB-12-19-20.8ag.pdf>.

¹⁸ Hawai‘i Department of Public Safety, Annual Report FY 2021, p. 18. See also U.S. Department of Justice, National Institute of Corrections (NIC), State Statistics Information. Accessed September 22, 2022. <https://nicic.gov/projects/state-statistics-information>.

¹⁹ See Hawai‘i Department of Public Safety, End of Month Population Report, July 31, 2022. Accessed September 4, 2022. <https://dps.hawaii.gov/wp-content/uploads/2022/08/Pop-Reports-EOM-2022-07-31.pdf>. See also Annual Report FY 2021, note 18 supra. The costs of pretrial detainees at OCCC are calculated by multiplying the total number of pretrial detainees at OCCC by the average daily cost per inmate per day.

²⁰ See End of Month Population Report, note 19 supra. See also Annual Report FY 2021, note 18 supra. The costs of pretrial detainees Statewide are calculated by multiplying the total number of pretrial detainees Statewide by the average daily cost per inmate per day.

²¹ Kevin Dayton, “Planning Costs Climb For New Oahu Jail as Debate Drags on Over its Scope,” *Honolulu Civil Beat*, January 3, 2022. Accessed September 1, 2022. <https://www.civilbeat.org/2022/01/ige-asks-for-15-million-more-to-plan-new-oahu-jail-but-wants-to-cut-costs/>. The article states in relevant part: “Robert Merce, a lawyer and former member of the Department of Public Safety’s Reentry Commission, predicted last month the new jail will probably cost on the order of \$1 billion. Ige does not dispute that estimate, remarking last month that “I do think that we heard that that’s what jail facilities cost today.”

²² News Release, Governor David Ige, “Groundbreaking for New Housing Construction Held at Women’s Community Correctional Center,” July 12, 2021. Accessed September 1, 2022. <https://governor.hawaii.gov/newsroom/pds-news-release-groundbreaking-for-new-housing-construction-held-at-womens-community-correctional-center>.

- ²³ See generally, Hawai‘i Department of Public Safety, “Future of Hawaii’s Community Correctional Centers, Vol. 7-Neighbor Island CCC Housing Projects Advance” (July 2019). Accessed September 1, 2022. https://dps.hawaii.gov/wp-content/uploads/2019/07/Hawaii-CCC_Newsletter_Vol7-V4.pdf7-19-19.pdf.
- ²⁴ Timothy Wong, “ICIS Scorecard, Dashboard Indicators and Trends, Fiscal Years 2014-2018,” Interagency Council on Intermediate Sanctions, February, 2021. Accessed September 1, 2022. <https://icis.hawaii.gov/wp-content/uploads/2021/05/2014-2018-Hawaii-ICIS-Scorecard.pdf>.
- ²⁵ July 31, 2022 End of Month Population Report, note 19, supra. (assigned count).
- ²⁶ The Judiciary of the State of Hawai‘i, “2021 Annual Report Statistical Supplement,” Table 4, Total Caseload. Accessed September 1, 2022. <https://www.courts.state.hi.us/wp-content/uploads/2021/12/AD-P-751-StatsRpt2021.pdf>.
- ²⁷ Hawai‘i Paroling Authority, 2020 Annual Statistical Report, Statistical Table III, Total Parole Caseload FY2019-FY2020. Accessed September 1, 2022. <https://dps.hawaii.gov/hpa/files/2020/10/2020-Annual-Report.pdf>.
- ²⁸ Amanda Essex, National Conference of State Legislators, “New Report Examines Length of Probation Terms by State.” Accessed September 1, 2022. <https://www.ncsl.org/research/civil-and-criminal-justice/new-report-looks-at-length-of-probation-terms-by-state-magazine2021.aspx>.
- ²⁹ National Conference of State Legislators, note 28 supra.
- ³⁰ Justice Policy Institute, Myron B. Thompson School of Social Work, and Georgetown Law, The Disparate Treatment of Native Hawaiians in the Criminal Justice System (Honolulu: Office of Hawaiian Affairs, 2010), 17. Accessed September 1, 2022. https://justicepolicy.org/wp-content/uploads/2022/04/10-09_rep_disparatetreatmentofnativehawaiians_rd-ac.pdf.
- ³¹ Final Report of the HCR 85 Task Force on Prison Reform, “Summary and Key Recommendations,” Office of Hawaiian Affairs (2019).
- ³² Disparate Treatment of Native Hawaiians, note 30, supra. Executive summary.
- ³³ Disparate Treatment of Native Hawaiians, note 30, supra. Executive summary.
- ³⁴ July 31, 2022 End of Month Population Report, note 19 supra.
- ³⁵ Exclusive: Riot Leads to Lockdown at State’s Largest Jail, Hawaii News Now, February 16, 2016. Accessed September 1, 2022. <https://www.hawaiinewsnow.com/story/31238122/exclusive-riot-leads-to-lock-down-at-states-largest-jail/>. See also State to Investigate OCCC Inmate Disturbance, Honolulu Star-Advertiser, February 17, 2016. Accessed September 1, 2022. <https://www.staradvertiser.com/2016/02/17/breaking-news/state-to-investigate-occc-inmate-disturbance/>.

³⁶ Blaze Lovell, “Maui Riot Just the Latest Sign of Trouble in State’s Overcrowded Jails,” Honolulu Civil Beat, March 15, 2019. Accessed September 1, 2022. <https://www.civilbeat.org/2019/03/maui-riot-just-the-latest-sign-of-trouble-in-states-overcrowded-jails/>.

³⁷ Kevin Dayton, “Inmates Set Fire, Barricade Doors in Housing Unit of Hilo Jail,” Honolulu Civil Beat, September 8, 2022. Accessed September 1, 2022. <https://www.civilbeat.org/2020/09/inmates-set-fire-barricade-doors-in-housing-unit-of-hilo-jail/>.

³⁸ Chatman v. et al. v. Otani et al., Civil No. 21-00268-JAO-KJM (D. Haw. August 12, 2021). See also Kevin Dayton, “Federal Judge Rules Prison System Has Failed to Protect Inmates from COVID-19,” Honolulu Civil Beat, July 13, 2021. Accessed September 1, 2022. <https://www.civilbeat.org/2021/07/federal-judge-rules-prison-system-has-failed-to-protect-inmates-from-covid-19/>.

³⁹ See Testimony of the Department of the Attorney General, Thirty-First Legislature, 2022 re: Appropriations for Claims Against the State, Its Officers, or Its Employees, before House Committee on Judiciary and Hawaiian Affairs, March 15, 2022. Accessed September 1, 2022. https://www.capitol.hawaii.gov/Session2022/Testimony/SB3041_SD2_TESTIMONY_JHA_03-15-22_PDF. See also Kevin Dayton, “State To Pay \$250,000 To Cover Lawyers’ Fees in Lawsuit Over Covid-19 In Hawai‘i Prisons,” Honolulu Civil Beat, March 16, 2022. Accessed September 1, 2022. <https://www.civilbeat.org/2022/03/state-to-pay-250000-to-cover-lawyers-fees-in-lawsuit-over-covid-19-in-hawaii-prisons/>.

⁴⁰ Creating Better Outcomes, note 11, supra. p. 34. See also Michele Deitch and Michael B. Mushlin, “Let the Sunshine In: The ABA and Prison Oversight,” in Myrna Raeder (ed.), The State of Criminal Justice (Washington, D.C.: American Bar Association, (2011): 243, <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1981&context=lawfaculty>.

⁴¹ Anthony M. Kennedy, “Speech at the American Bar Association Annual Meeting,” (speech, San Francisco, CA, April 9, 2003), United States Supreme Court https://www.supremecourt.gov/publicinfo/speeches/viewspeech/sp_08-09-03.

⁴² See *O’Lone v. Estate of Shabazz*, 482 U.S. 342, 354 (1987) (Brennan, J, dissenting).

⁴³ Michele Deitch, “The Need for Independent Prison Oversight in a Post-PLRA World,” Federal Sentencing Reporter, vol. 24, no. 4, (April 2012): 236–244.

⁴⁴ Christin Johnson and Ted Sakai, “August 2022 HCCC Observations,” September 2, 2022. Accessed September 4, 2022. <https://ag.hawaii.gov/wp-content/uploads/2022/09/HCSOC-August-2022-HCCC-Observations.pdf>.

⁴⁵ *Chatman v. et al. v. Otani et al.* at *14, note 38 supra.

⁴⁶ Oversight Coordinator’s Monthly Report, August 18, 2022. Accessed September 1, 2022. <https://ag.hawaii.gov/wp-content/uploads/2022/08/HCSOC-2022.8.18-Meeting-Minutes.pdf>

⁴⁷ “Daisy Kasitati” See Kevin Dayton, “State Agrees to Pay \$550,000 to Settle Lawsuit Over Suicide at Maui Jail,” Honolulu Civil Beat, February 23, 2022. Accessed September 15, 2022. <https://www.civilbeat.org/beat/state-agrees-to-pay-550000-to-settle-lawsuit-over-inmate-suicide-at-maui-jail/>. See also SB 3041, SD 2, HD 1, CD 1 (2022 Haw. Sess. Laws Act 280), p. 3. Accessed September 15, 2022.

https://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=SB&billnumber=3041&year=2022

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Getting It **R**ight: Better Ideas for a New Jail

by Robert K. Merce

APPENDIX

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BETTER IDEAS FOR A NEW JAIL*

We shape buildings; thereafter they shape us.

- Sir Winston Churchill to the House of Lords,
October 28, 1943

INTRODUCTION

Within the next few months the State plans to issue a Request for Proposals (RFP) for a public-private partnership (P3) to design, construct, finance, and partially maintain a new jail to replace the Oahu Community Correctional Center (OCCC). The new jail will have approximately 1,300 beds, and will cost \$1 billion, not the \$525 million that was projected three years ago.¹

The new jail will be one of the most expensive, if not *the* most expensive, public works projects ever undertaken by the State, and it will have a major impact on criminal justice outcomes in Hawaii for decades.

There is a right way and a wrong way to plan a new jail, and unfortunately, Hawaii chose the wrong way. The Departments of Public Safety (DPS) and Accounting and General Services (DAGS) turned to a New Jersey-based consulting firm with very little knowledge of Hawaii to lead the planning effort. The planners ignored best practices, shut the community out of the planning process, focused on bricks and mortar rather than people and programs, and failed to address critical questions about who should be in the jail, and how the State could reduce the jail population and build a smaller and less expensive jail without compromising public safety.

In 2017 the House Concurrent Resolution (HCR) 85 Task Force on Prison Reform warned that planning for the new jail was on the wrong track, and in their final report to the 2019 legislature they sounded the alarm, saying that despite spending millions on planning, the new jail incorporated all of the problems and bad ideas of the old jail and that it would be “a relic of the past the moment it is completed, because no matter how modern it looks from the outside, it will be based on outmoded and obsolete ideas and a failed planning process.” The Task Force found that the new jail was so poorly thought out that the State should convene a group of government and community stakeholders to *start the jail planning process over again* and focus on building “a smart, small, and humane 21st century jail instead of the monolithic 19th century jail that is now on the drawing boards.”²

* Portions of this paper previously appeared in the Ideas section of *Honolulu Civil Beat* on September 20, 2020 and February 21, 2021.

More recently the Hawaii Correctional Systems Oversight Commission, whose five members collectively have more than 100 years of experience with Hawaii's criminal justice system, expressed deep concerns about the new jail and called for the creation of an advisory committee of community stakeholders to review, *and if necessary revise*, the planning that has been done to date.

The new jail will be a financial disaster and produce bad outcomes for decades, but it doesn't have to be that way. If we work together we can build a jail that will make our community safer at a fraction of the cost of the jail now being planned. Working together we can build an innovative and transformative jail that will address the inequities of our criminal justice system, save lives, and meet the ever-evolving needs of our community.

But we must act quickly. If we don't stop the procurement process now, we will soon be irrevocably committed to a jail the people of Honolulu had no say in planning, and that is too big, too expensive, and will cause harm to our community as long as it exists.

THE JAIL PLANNING PROCESS WAS FLAWED FROM THE VERY BEGINNING

To understand how the jail planning process went off the rails we have to go back to 2015 when then DPS Director Nolan Espinda announced that the Honolulu Authority for Rapid Transit (HART) had decided to put an elevated rail station near the current OCCC, which meant that the land the jail occupies had become very valuable: "Now that the city plans to run Oahu's elevated rail line past the OCCC site, it is obvious the Kalihi land under OCCC could be put to much more valuable use as a new development rather than a jail site," Espinda said, adding that the idea of moving the facility had support in the House and Senate and that "there are a lot of stars aligning here."³

The City and County of Honolulu's 2018 Plan Review Use Permit for the new jail echoed Espinda's comments: "The replacement OCCC frees up important urban land in the populated Kalihi area; the existing OCCC is located within one-quarter-mile from the future Kalihi rail station."⁴

The decision to build a new jail on Oahu was not driven by the fact that the existing OCCC is falling apart and essentially unfit for human habitation: From the very beginning, the idea was to relocate the old jail as quickly as possible so that the land it occupies could be redeveloped.

In their effort to streamline the planning process DPS, DAGS, and their consultants focused almost exclusively on site-selection and the physical features of the jail and gave little or no thought to who should be in the jail, or how it should function within the context of the broader criminal justice system. While Honolulu was focused on building a huge new jail, other cities

were focused on reducing their jail populations. A Commission in New York City set a goal of reducing their jail population by more than 50 percent by closing the infamous Rikers Island Jail and replacing it with smaller jails in the city's boroughs.⁵ Philadelphia was developing a plan to cut its jail population in half and address racial, ethnic, and economic disparities in its criminal justice system.⁶ New Orleans was working on an initiative to reduce its jail population by 38 percent,⁷ and Akron, Ohio was developing a plan to divert low-level offenders from its jail.⁸ Similar reform efforts were being undertaken in at least 50 cities, both large and small, across the United States.⁹

A CRITICAL MISTAKE SENT THE PLANNING PROCESS IN THE WRONG DIRECTION

DPS and its consultants made many planning mistakes, but the biggest one by far was to decide that they did not need to examine the policies and practices driving the jail population and address them as part of a comprehensive plan to manage both the jail population and the larger justice system more effectively and efficiently. The magnitude of that error cannot be overstated because it affected every aspect of the planning process, and like taking a wrong turn at the beginning of a journey, it led the planners, and now the entire State, down the wrong path and to the wrong destination.

THE STATE DELIBERATELY IGNORED BEST PRACTICES IN THE PLANNING PROCESS

Virtually all of the problems with the new jail stem from the fact that the planners decided not to follow best practice in jail planning, many of which are clearly set out in the National Institute of Correction's *Jail Capacity Planning Guide: A Systems Approach* (2009).¹⁰

The systems approach views jails as one of many parts of a criminal justice system whose policies and practices determine how the jail is used and how many beds are needed to avoid overcrowding. The systems approach stresses that *the key to long term management of the jail population is directly tied to management of other aspects of the justice system:*

Jails are part of a complex criminal justice system whose policies and practices directly influence total bed need. As such, jail planning cannot be done in a vacuum. Any consideration of future jail bed need must take place within the context of a discussion about how to manage the larger criminal justice system more effectively. ***Jail planning and system planning are one and the same.***¹¹

The systems approach shifts the nature of jail planning from simply making population forecasts based on past trends and the assumption that the policies driving the jail population will remain unchanged—the approach used in Hawaii—to developing a continuum of options for law enforcement and judges in which jails are only one option among many, and one to be used

sparingly and as a last resort. The systems approach calls on planners to “plan as much for programs as they do for [jail] beds.”¹²

Research has shown that the traditional way we use jails does nothing to reduce future offending. Accordingly, jail planning must move beyond the simplistic formula-based approach that builds beds based on past demands to a results-based paradigm that addresses the many factors that drive the demand for beds.¹³

The systems approach is based on a body of research that challenges the notion that locking people up is the only way, or the best way, to protect the public.¹⁴ It makes the case for a new conceptual framework that “reasserts the primacy of treatment and redefines the system’s response to failure.”¹⁵ It is a new way of thinking about the criminal justice system that makes reducing future crime a central goal and manages the jail population long-term by:

1. Reserving jail for the highest risk defendants;
2. Making available a full continuum of alternatives to jail;
3. Relying on high quality treatment and evidence-based sanctions;
4. Creating strong and effective pretrial and reentry services; and
5. Adopting a positive emphasis on collaboration and systemic change.¹⁶

Population management strategies that focus on alternatives to jail significantly reduce the jail population, which in turn allows communities to build smaller and less expensive jails. That is important for three reasons.

First, construction cost for new jails are outrageously high. If, as currently projected, the new jail will cost \$1 billion and have approximately 1,300 total new beds, each bed would cost a whopping \$770,000, which is probably the highest per bed cost in the country, if not the world.

Second, although construction costs for a new jail are incredibly high, on average, *they represent only 10% of the overall operating costs of a jail over a 30-year period.*¹⁷ Thus, the key to reducing correctional costs long-term lies in reducing the jail population by providing alternatives to jail, or “off ramps,” at each at each of the key decision points in the criminal justice system.

Third, the Vera Institute of Justice studied counties that built new jails between 1999 and 2005 as a solution to old or overcrowded facilities and found that building a new jail *without addressing the policies driving the jail population* resulted in a vicious cycle in which the new jails that were

supposed to reduce overcrowding rapidly filled to capacity, creating a demand for more capacity, and precipitating a costly building cycle.¹⁸ For example:

- In Salt Lake County, Utah, a new 2000 bed jail filled to capacity within 21 days of opening;
- In Tipton County, Tennessee, a newly expanded jail that increased capacity from 122 beds to 201 beds became overcrowded the month it opened.;
- In Jefferson County, Colorado, a 480- bed jail that that was supposed to serve the county for 19 years filled up within five years; and
- In Adams County Colorado a jail that was intended to serve the county for 14 years filled to capacity in two years.¹⁹

We can only speculate on why the State decided to ignore best practices and use an old and discredited planning process for one of the biggest and most important public works projects in the history of the State, but that is what it has done. The misguided planning process will result in the continued misuse of the jail, a jail that is bigger and more expensive than it needs to be, and a jail that will not reduce future crime or keep our community safe.

THE PUBLIC WAS COMPLETELY SHUT OUT OF THE JAIL PLANNING PROCESS

“The best solutions are driven by those who experience and are familiar with the local culture and environment.” –Center for Policing Equity

Engaging the community in the jail planning process is universally recognized as a best practice and an absolutely essential element of the jail planning process. Community stakeholders bring the aggregated knowledge, skills, intuition, and insights of local residents to solving a collective challenge.²⁰ This is often called “the wisdom of the community.” Tapping into this wisdom can shape the type of questions that are asked, challenge prevailing norms, and bring about unexpected insights that lead to innovative and transformative solutions.



The National Institute of Corrections (NIC) has said:

Community participation in planning is important because the jail belongs to the community it serves; it is not solely the concern of the sheriff or director of corrections. The type of facility a community builds and the way it is used are as much a reflection of community values as they are of local, state, and federal laws. It is common for stakeholders such as victim advocates, business leaders, the clergy, educators, and elected officials to actively participate on the community advisory committee.²¹

The MacArthur Foundation also emphasizes the importance of a collaborative process in jail planning:

COLLABORATE. The first step is to ensure that the local justice system is truly functioning as a system. Policymakers must step out of their silos and consider how the different elements of the system interrelate, and how each contributes to public safety outcomes. This can take time and energy but reap rewards in the form of trust and collaboration, so that organizations have a shared understanding of the system, both as it exists now and what it can be in the future.

...

Affected groups must be on board to advance the new way of doing business, and to move forward despite barriers and setbacks. Engaging the community, the workforce, and other interested groups doesn't happen on its own. As motivation for change starts to build, conversations can begin with affected parties. Transparency and genuine opportunities for input by constituent's support engagement.²²

The Justice Management Institute has found that a “culture of collaboration is one of the shared characteristics of successful justice systems,” and in this context collaboration means more than just having meetings: it means “working together toward a common purpose—sharing a vision, preparing a plan, and implementing the plan to achieve agreed upon outcomes.”²³



The OCCC Planning Team does not include any community stakeholders or representatives. (DPS photo).

The planners at CGL/Ricci Greene Associates, one of the country's leading justice architectural firms, likewise stress the need for a collaborative approach to jail planning: “Successful jurisdictions use a collaborative approach to planning that include representation of *all actors in the criminal justice system and the community* including advocates, judges, administrators, legislators, prosecutors, the defense bar,

correctional officers, program operators, and community members. The "buy in" from key stake holders is *absolutely essential*.²⁴

The HCR 85 Task Force specifically found that the State and its consultants did not engage the community in the jail planning process in a meaningful way,²⁵ and that is surely a prescription for failure.

WE SHOULD NOT COMMIT TO BUILDING A NEW JAIL UNTIL WE KNOW HOW MUCH IT WILL COST

In the past 18 months, construction costs have increased dramatically due to a steep rise in the cost of materials, snarled supply chains, tariffs on steel and aluminum, and producer staffing shortages due to the pandemic.

The leading association for the construction industry, Associated General Contractors of America (AGC), recently reported that the producer price index (PPI), which measures the average changes in prices received by domestic producers for their output, increased 26.3% from June 2020 to June 2021, and even that steep increase understates the severity of the problems facing the construction industry which has seen the index for lumber and plywood increase 101%, the index for steel increased 88%, for copper and brass 61%; and for aluminum 33%.²⁶ The high prices are expected to persist well into the future.²⁷

The AGC warns that in addition to significant price increases, contractors are experiencing completely unreliable delivery times and that owners should start their projects with realistic expectations about current costs and the likelihood of increases.²⁸

THE UTAH STATE PRISON: A CAUTIONARY TALE

In 2017 Utah broke ground on a new, 4,000-bed state prison outside of Salt Lake City. The new prison was considered state of the art and was projected to cost \$550 million.²⁹ After years of planning, state legislators were pleased that construction was finally underway and Salt Lake City leaders were satisfied with the project despite their initial opposition to building the prison near their city.³⁰

But beneath the buoyant optimism there was an undercurrent of concern. As the new prison broke ground, the city's nearby airport expansion project was \$350 million over budget and construction costs in the area were up 12%.³¹ Jim Russell, the state official overseeing the new prison said he was concerned about the cost increases but confident they could be managed. State Senator Jerry Stevenson, who co-chaired the legislature's Prison Development Commission, acknowledged that higher construction costs were "very possible" but said it was an issue the legislature would address when and if it arose.³²

By April of 2019 the cost of the new prison had risen from \$550 million to \$800 million³³ and construction costs were running 18% to 20% higher than anticipated, but by that time it was too late to do anything about it. Senator Stevenson said that the legislature did not want to come up with the additional funds but “we’re way past the point of no return on this. We’re going to have to finish it now.”³⁴

Utah’s new prison is now almost complete. The final cost has not been tabulated but it is expected to come in at about \$1 billion, depending on the final procurement process.³⁵ That’s an 80% increase over the original cost estimate.

Officials blame the high cost on tariffs on China, the pandemic, labor shortages, and supply chain issues. “We’ve had now 42% escalation [in construction costs] since 2015 when it [the prison] was first funded until now,” Russell said. “All in all, I think we’ve done a fantastic job with where we’re at. The budget could have been much more . . . *it should have been \$1.3 billion.*”³⁶

The Utah State Prison is the canary in the coal mine. We do not have an accurate estimate of how much the jail will cost, so there is no way to determine if it will be worth the price, or if a P3 is a better financing option than the traditional procurement process.

THE NEW JAIL WILL MAKE HAWAII’S LONG-TERM FISCAL PROBLEMS WORSE

In 2019 a committee of economists, scholars, and fiscal experts from the Hawaii Executive Council issued a report, *Troubled Waters: Charting a New Fiscal Course for Hawaii*, that documents the enormous fiscal challenges facing Hawaii’s State and local governments in the next 30 years.³⁷ The Committee found that future costs in three critical areas—mitigating the impact of climate change, developing and maintaining infrastructure, and honoring public employee retirement benefits—will exceed \$88 billion, and that revenues will not be sufficient to meet those needs.

Today, the cost of operating government is getting more expensive while Hawaii’s economy has not kept pace with the rest of the nation. Between 2012 and 2018, the cost of State government increased 41% despite the number of employees remaining relatively flat. During this same period, Hawaii’s economy grew 9.8% or 1.6% annually compared to the national rate of 2.4%. DBEDT forecasts GDP growth of 1.1% in 2019 and 1.2% in 2020. Faced with these economic conditions, State and county governments cannot continue to operate in such a manner. *Government will simply be too expensive to conduct business as usual.*³⁸

The report calls for government and the private sector to collaborate, innovate, and create a strategic vision to address the serious fiscal challenges facing the State.³⁹

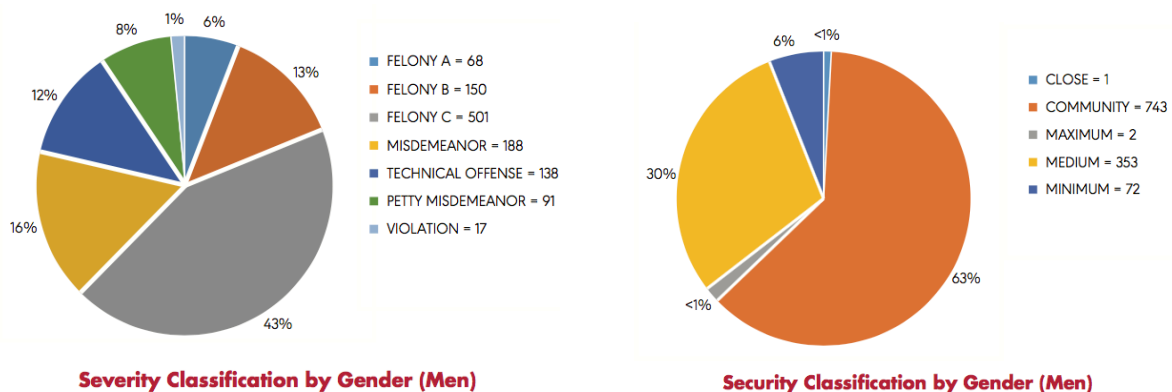
Honolulu has a wealth of innovators and thought-leaders from business, labor academia, non-profits, and other interest groups who are ready to share their knowledge, experience and insights in a collaborative effort to improve our criminal justice system and plan and design a jail that will meet the needs of our State ***without putting a huge financial burden on the next generation.*** It would be foolish not to tap into this reservoir of knowledge, experience, and insight in planning the new jail.

THE OPERATING COSTS OF THE NEW JAIL ARE NOT SUSTAINABLE

In June, 2021, DPS and DAGS received a report from one of their consultants that said “assuming there are no changes in our criminal justice or correctional policies,” by 2024 the average daily population (ADP) of the new jail will be 1,237 inmates, and that the ADP would decrease to 918 inmates by 2032.⁴⁰

It now costs \$219 a day to house an inmate in Hawaii.⁴¹ That cost will almost certainly increase, but using the current figure, by 2024 the OCCC population will cost the State, on average, \$271,000 a day (\$99 million a year) decreasing to \$201,000 a day (\$73 million a year) by 2032 (assuming current costs). The lease rent on the new jail—which will include the private partner’s profit—will also have to be factored into the cost of operating the new jail.

Eighty-one percent of the men in OCCC are charged with low-level (class C) felonies or lesser offenses—misdemeanors, petty misdemeanors, technical offenses, or violations. Nearly 70% are in one of the two lowest security classifications—community custody (63%) and minimum security (6%),⁴² and 23% are men who violated a condition of probation but did not commit a new crime.⁴³



There is no rational reason for keeping so many non-dangerous, low-level offenders in jail at such a high cost. We can't afford it, and it simply doesn't make sense. We should reduce our jail population as other jurisdictions across the country have been doing for years.

CREATING "OFF RAMPS" TO REDUCE THE JAIL POPULATION

The key to reducing the jail population is to have alternatives to jail, or "off ramps," at key decision points in the criminal justice process. A full discussion of this topic is beyond the scope of this paper, but what follows are a few "off ramps" that have been discussed in Hawaii and should be carefully considered before the State builds a costly 1,300-bed jail.

■ *Issue Citations Lieu of Arrest*

Police officers currently have discretion to issue a citation in lieu of arrest for misdemeanors, petty misdemeanors and violations.⁴⁴ In 2018 the HCR 134 Task Force on Criminal Pretrial Reform recommended that the legislature expand police officer's discretion to include issuing citations for non-violent, class C felonies.⁴⁵

Expanding the use of citations to non-violent class C felonies will reduce the number of people who are taken into custody and ultimately reduce the number of people who end up in jail.

■ *Establish A 24/7 Island-Wide Crisis Response Team*

Honolulu is one of many cities whose health care and criminal justice systems are challenged by a high volume of people experiencing a behavioral health crisis. In most cases the police and fire departments are called on to respond to these people, and in many cases, the person in crisis ends up at the cell block and then in jail.

To address this problem the City and County of Honolulu recently launched a Crisis Outreach Response and Engagement (CORE) program that will use a team of emergency medical technicians and community health workers to respond to non-violent emergency calls about people in crisis.⁴⁶

That is a good idea, but unfortunately the program has been scaled back from the original concept. Instead of operating 24/7 it will operate only 12 hours a day, instead of operating island-wide it will only operate in Waikiki and Chinatown, and the response team will not include a social worker as originally planned.⁴⁷

Honolulu needs an effective, island-wide, 24/7 crisis response team. The goal should be a program that is as effective as the CAHOOTS (Crisis Assistance Helping Out On The Streets) program in Eugene Oregon that keeps people in crisis out of jail and saves the city millions of dollars every year.⁴⁸

■ *Expand Diversion Programs*

Diversion is one of the most important strategies for improving the lives people who need help, and at the same time reducing the jail population. Honolulu should have at least two types of diversion programs:

1. A Triage Center for People in Crisis. Triage centers are for people who are experiencing a mental health or drug-related crisis. They are open 24/7 and are staffed by mental health professionals. The primary function of the center is to provide stabilization and case management services. The best centers accept walk-in patients and patients brought in by emergency medical personnel, mobile crisis intervention units, law enforcement, and family members or friends. Triage centers are characterized by a streamlined admission process (less than 15 minutes) and a “no wrong door” policy (patients are not turned away). Triage centers are designed for stabilization rather than extended care.

2. Diversion Centers. Diversion centers provide case management services to people who are not in crisis but have chronic social, economic and medical needs, and people who have engaged in criminal activity related to poverty, addiction, mental illness, and homelessness. Pre-arrest diversion centers help people get back on their feet and reduce the chances that they will reoffend. They are effective in reducing the jail population and making communities safer.

A triage center and effective island-wide prearrest diversion centers would address the needs of the thousands of Oahu residents who are not getting the care and services they need, and significantly reduce our jail population.

■ *Enact Bail Reform*

A key decision point in the criminal justice system occurs when a person who has been arrested appears before a judge who determines whether the person should be released pending trial, or remain in custody until their case has been resolved. The pretrial release/detention decision is critically important to the defendant because studies have shown that “[j]ust a few days in jail can increase the likelihood of a sentence of incarceration and the harshness of that sentence, reduce economic viability, promote future criminal behavior, and worsen the health of those who

enter—making jail a gateway to deeper and more lasting involvement in the criminal justice system at considerable costs to the people involved and to society at large.”⁴⁹

For the disproportionately high number of people who enter jails from minority communities or who suffer from mental illness, addiction, and homelessness “time spent in jail exacerbates already difficult conditions and puts many on a cycle of incarceration from which it is extremely difficult to break free.”⁵⁰ Defendants who cannot make bail are at risk of losing their jobs, and with it the income that supports their children, pays their rent and utilities and puts food on the table. In the long run they can also lose their house or apartment, health insurance and custody of their children. After maxing out their credit cards, a family may end up deep in debt or even homeless.

In our society liberty is supposed to be the norm and detention prior to trial the exception, but in practice, just the opposite is true. A 2018 study by the ACLU-Hawaii found that overall judges in Hawaii required bail as a condition of release in 88% of cases, and in the majority of those cases it was set at a level the defendant could not afford.⁵¹

Almost half the people in OCCC are there because they cannot afford bail. In the six month period from April 1 to September 30 , 2021, pretrial detainees at OCCC cost the State, on average, \$113,000 a day. If we include the pretrial detainees in neighbor island jails the cost goes up to \$200,000 a day.

The use of money bail is often justified on the grounds that it makes us safer by keeping dangerous people in jail, but a report from the 2018 Criminal Pretrial Task Force chaired by Hawaii circuit judge (now U.S. magistrate) Rom A Trader found that “[t]here is virtually no correlation between the setting of a particular bail amount and whether the defendant will commit further crime or engage in violent behavior when released from custody. *Thus, money bail is a poor method of assessing and managing a defendant’s risks.*”⁵²

To create a truly just pretrial system, we must end money bail. That is not a radical idea. The federal government did it, and many jurisdictions have moved in that direction:

- The District of Columbia releases 94% of the people who are arrested without bail. Of those released, 91% make their scheduled court dates and 98% are not arrested for a violent crime while awaiting trial.
- Since 2017 New Jersey has rarely imposed money bail as a requirement of release. Last year the Chief Justice of the New Jersey Supreme Court reported that bail reform in the state was working “admirably and well,” court appearance rates exceeded 90%, and the percentage of defendants on pretrial release who are charged with indictable criminal activity remained “consistently low.”⁵³

- In February, 2021, Illinois completely eliminated money bail as part of a sweeping criminal justice reform bill that includes changes to every part of the justice system, from police accountability to sentencing.⁵⁴ The no bail law will not go into effect until 2023 to allow time for challenges to the bill and to train judges on how the new law should be applied.

It is time to quit tinkering with our money bail system in the hope that it will somehow become fair, equitable and just. It won't. If we want a truly just pretrial system, we have to end money bail.

We should eliminate money bail completely, but at the very least we should eliminate it for select non-violent class C felonies, misdemeanors, petty misdemeanors, and violations.

Judges should also be encouraged to release pretrial defendants on unsecured bail pursuant to HRS § 804-9.5 (2019). To our knowledge very few defendants have ever been released under this statute even though it has been the law for more than two years.

■ *Make Possession of 2 Grams Or Less of a Dangerous Drug a Misdemeanor*

HRS §712-1243, Promoting a Dangerous Drug in the Third Degree (commonly referred to as “PDD3”), makes possession of “any dangerous drug *in any amount*” a class C felony punishable by up to five years in prison and a \$10,000 fine. The term “any amount” in HRS §712-1243 includes amounts as small as the residue found in a pipe.⁵⁵

PDD3 is one of the most commonly charged drug crimes. In 2020 the Hawaii Paroling Authority set more than twice as many minimum sentences for PDD3 than for all other drug crimes combined.⁵⁶ The average minimum sentence was 2.72 years, with sentences ranging from 1 year to 4.3 years.⁵⁷ PDD3 is often charged when an individual with a substance use disorder is arrested on a minor charge, and during the custodial search police find a small amount of a dangerous drug in the defendant's possession.

The Legislature should enact SB 527, Thirty-First Legislature, 2021, that establishes a new misdemeanor offense of Promoting a Dangerous drug in the Fourth Degree for possession of small amounts of a dangerous drug, and limits the class C felony of PDD3 to possession of two grams or more of a dangerous drug.

Moreover, we should recognize that addiction is a complex, multifactorial health disorder that is preventable and treatable *and “not the result of moral failure or a criminal behavior.”*⁵⁸ We should treat substance use disorders as a public health rather than a criminal justice problem, implement evidence-based prevention and treatment programs, engage scientific experts and diverse stakeholders in coordinated policy making, support drug-related research, and ensure access to scheduled medications for therapeutic use.⁵⁹

■ *Stop Housing Probation Violators in the Jail*

In the six months prior to the outbreak of the coronavirus pandemic in Hawaii (November 30, 2019 - April 30, 2020) there were, on average, 312 male probation violators at OCCC. The average daily cost to house the male probation violators was \$68,000 a day. Almost all of the men were in the HOPE probation program and were serving short sentences for violating program rules, *not because they committed a new offenses*.

In 2018 the HCR 85 Task Force on Prison Reform recommended that the State consider housing probation violators in dormitories or assigning them to community-based facilities where the reasons they violated the conditions of their probation could be addressed by mental health and/or addiction treatment professionals and hopefully remedied.”⁶⁰

Before building 300 or more beds in the new jail for probation violators at a cost that would probably be in the neighborhood of \$120 million,⁶¹ the State should follow the recommendation of the HRC 85 Task Force and explore other housing arrangements for HOPE probation violators.

———— P3s Are Not Suitable For Planning Jails ————

P3s may be suitable for projects like toll roads, bridges, and sewage treatment plants, but they are not appropriate for jails because jails require system planning. Before an architect picks up a pencil or puts a single mark on a piece of paper, a planning team that includes government officials *and community stakeholders* must arrive at a shared vision of a successful criminal justice system and define the function of the jail within that system. Architects sometimes describe this process with the maxim “Define Before You Design.”

In defining the role of the jail, the planning team must drill down on criminal justice data, identify the policies and practices driving the jail population, and plan for the expansion of alternatives to incarceration.⁶² Jail planning decisions have a broad impact and in many ways define the community of which the jail is a part—its values, vision, goals and aspirations. As such, jail planning can and must be done by the community, and the community alone: It cannot be outsourced to a corporation under a P3 contract.

The best way to design and build a successful jail is for the planning team to work closely with a good architect. In 2020 the American Institute of Architects (AIA) amended its Code of Ethics and Professional Conduct to include prohibitions against designing spaces intended for torture and indefinite or prolonged solitary confinement,⁶³ and in 2021 the New York Chapter of the AIA went a step farther and called on all architects to stop designing “inherently unjust, cruel,

and harmful spaces” and to shift to the creation of “new systems, processes, and typologies based on prison reform, alternatives to imprisonment, and restorative justice.”⁶⁴

The State should work with architects who have a track record of designing smart and humane spaces and who adhere to the ethical principles of the New York Chapter of the AIA. The architect who designs the jail should be willing to work closely with the community to ensure that the design of the jail aligns with community values and promotes the outcomes the community wants. P3s do not allow that to happen and *they should never be used to plan or design jails*.

Three other reasons why P3s are not a good idea for designing and building jails are:

- There is no reliable way to test whether a private sector proposal to deliver public infrastructure offers value for money compared to delivery of the same project by the public sector using conventional public procurement. Tools that purport to make such comparisons, called Public Sector Comparators (PSCs) tend to be unreliable due to: (1) lack of data on which to base cost estimates; (2) the difficulty of quantifying risks; (3) a lack of consensus on what discount rate to use for payments spread out over time; (4) the use of subjective judgments that can have a dramatic effect on cost estimates; and (5) the high cost of the modeling process.⁶⁵
- The contract between the private company and the State would likely last 30 or more years during which time the State’s correctional needs will undoubtedly change. P3s typically restrict how their facilities can be used, and that severely limits a government’s ability to respond to changing conditions.⁶⁶ If the State owned the facility it could modify it to meet its changing needs, or it could even repurpose or dispose of the facility entirely.
- Jails must be carefully maintained to protect the health and safety of inmates and staff, but there is a tendency for corporate owners to save money by ignoring problems or deferring maintenance at the public partner’s expense.⁶⁷

P3s Lack Transparency. In addition to the forgoing, one of the most troubling aspects of P3s is their lack of transparency and accountability. Alabama’s ill-fated partnership with CoreCivic* highlights the problem.

* CoreCivic (formerly known as Corrections Corporation of America) owns and operates the Saguaro Correctional Center in Eloy, Arizona, that houses approximately 1,100 Hawaii prisoners. The State of Hawaii has maintained a business relationship with CoreCivic for more than 20 years.

In 2019, Alabama Governor Kay Ivey announced that to reduce prison overcrowding she was seeking proposals from private corporations to design, finance, build and maintain two new prisons and lease them to the Alabama Department of Corrections (ADC) which would operate them with State employees. In soliciting and screening potential private partners, the Ivey administration promised that “any information received in response to the solicitation/request will not be publicly available until final contract(s) has received all approvals.”⁶⁸ In other words, there would be no public scrutiny of the partnership agreement until it was signed, sealed and delivered and it was too late for the legislature or anyone else to change it.

In the ensuing months the Ivey administration selected CoreCivic as the private partner and entered into confidential negotiations on the cost of the new prisons.

State representative Rich Ringo, a Republican like Governor Ivey, complained about the secret negotiations and said that at the very least the legislature was entitled to know the developer’s profit margin.⁶⁹

Representative Arnold Mooney, another Republican, said that lawmakers were being kept in the dark and asked rhetorically how they could carry out their fiduciary responsibilities to protect taxpayers without knowing anything about the P3 contracts or the cost of the prisons.⁷⁰

Student and community groups sought information about the project but the State rejected their open records requests and insisted that secrecy was necessary to protect the integrity of the P3 process.⁷¹

On February 1, 2021, Governor Ivey announced that her administration had reached an agreement with CoreCivic and signed contracts that obligated the State to pay approximately \$3 billion to lease two prisons for 30 years.⁷² Under the agreement the prisons would be financed, constructed, maintained and owned by CoreCivic, staffed by the Alabama Department of Corrections, and would be ready for occupancy by 2025.⁷³

The version of the contracts that were released to the public on February 1 contained scant information about the terms of the agreement or the responsibilities of the parties. In a press release the Ivey administration said that “trade secrets and security-related information would not be disclosed” and that final lease costs would become available only when “financial close is achieved with CoreCivic.”⁷⁴ A Fact Sheet said that “[a]s is common in a project of this size, the parties will continue to engage in confidential negotiations during the Financial Phase designed to refine the scope and price of the project.”⁷⁵ An entire Exhibit to the contract that was supposed to contain information on how CoreCivic would obtain financing for the project was marked “Confidential.”⁷⁶

Perhaps worst of all, the agreements had virtually no information on critical elements of the project such as the design of the prisons, maintenance and utilities management, environmental and sustainability services, plant services, and roads, grounds, and landscaping services.⁷⁷

Alabama State auditor Jim Zeigler said the contracts would “make a handful of developers multi-millionaires at the expense of Alabama taxpayers” and said he would try to stop construction of the new prisons.⁷⁸

In early April, 2021, Barclays, the London financial services firm that was the primary underwriter for the prison project, tested the waters and found that there was weak support for municipal bonds to fund new prisons in Alabama. Barclay’s also experienced a wave of criticism from the financial community and the public because it had previously agreed that it would not participate in bond offering to build prisons.⁷⁹

On April 12, 2021, 43 business leaders, investors and activists signed a letter urging banks and investors to refuse to purchase bonds for the new prisons on the grounds that they would “perpetuate mass incarceration.”⁸⁰ Signers included AllianceBernstein, a firm with \$700 billion in assets under management, which announced that they would not participate in the offering because it contravened their policy against “modern slavery.”⁸¹

And in an unprecedented move, the American Sustainable Business Council and its partner, Social Venture Circle, which together represent over 250,000 businesses, returned Barclay’s membership dues and sponsorship to protest the deal.⁸² MaryAnne Howland, the American Sustainable Business Council’s board chair announced the move, saying “We abhor the hypocrisy represented here and renounce the continued investment in the broken, unjust system of incarceration of this country.”⁸³

On April 19 Barclays announced: “We have advised our client that we are no longer participating in the transaction.”⁸⁴ A short time later KeyBanc Capital Markets, Inc. a co-manager on the deal also announced its withdrawal, and the whole P3 collapsed.⁸⁵

Hawaii is heading down the same treacherous and misguided path as Alabama. It is seeking a similar P3 and it is managing the P3 process with the same degree of secrecy that plagued the Alabama project. In October DPS and DAGS announced that it had issued a Request for Information (RFI) to obtain feedback on the new jail. It received responses from 22 contractors, designers, financiers, equity investors, and others *but it has not released the names of any of the respondents or what they said about the project.*⁸⁶

The State is now preparing to issue a Request for Qualifications (RFQ) to determine which companies will be allowed to participate in the RFP next year. We can expect that the RFQ, will

be cloaked in the same secrecy as the RFI, and that DPS and DAGS will continue to plan the new jail in secret.

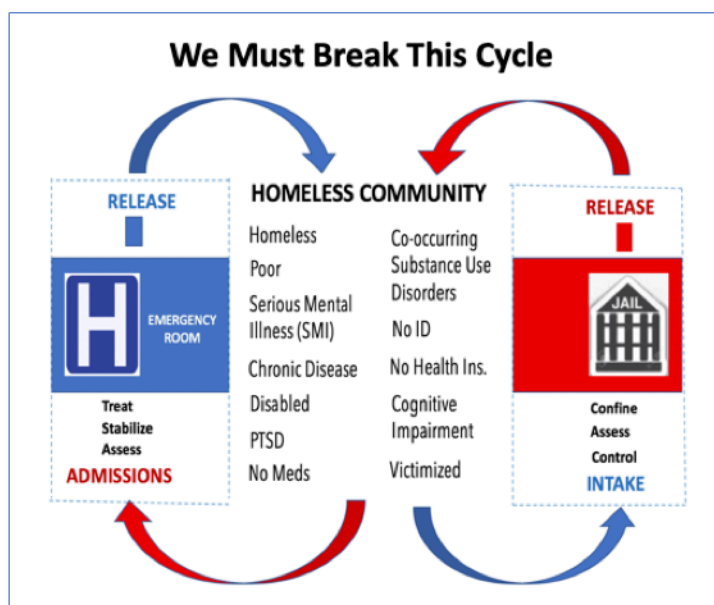
It is time for legislators and the public to step up and demand transparency in the planning of the new jail and ***put an end to the secret P3 process.***

21ST CENTURY JAIL DESIGN

Architect Louis Sullivan’s adage “form follows function” raises the question “What should be the function of a jail in the 21st century, and what form should it take?”

The way jails are used today has been shaped by two major events. The first was the closing of state mental health hospitals or “asylums” as they were known, in favor of community-based treatment for the mentally ill. The “deinstitutionalization” of the mentally ill was a well-intentioned policy given the deplorable conditions in state mental hospitals, but it didn’t work. There was not enough money for the community-based centers, so they never materialized, mental health professionals underestimated the difficulty of coordinating care for the mentally ill, and court decisions made it difficult to commit very sick people against their will.

As a result of deinstitutionalization, many mentally ill people went untreated and ended up living on the street, a situation that exists to this day. In 2016 the Honolulu Police Department reported that 43% of all arrests were homeless people and that 72% of the homeless people in the police cellblock were mentally ill or on drugs.⁸⁷ Eighteen percent of the homeless population of Oahu say they have mental health issues,⁸⁸ and about 700 individuals diagnosed with Severe and Persistent Mental Illness (SPMI) are admitted to OCCC each year.⁸⁹ DPS estimates that between 9.5 % and 12% of the OCCC population are mentally ill, and on average these people cycle through the jail about once every four months, with some cycling through *every six weeks*.⁹⁰



The second major event was the passage of highly punitive state and federal laws beginning in the 1970s in response to rising crime rates and a period of tumultuous political and social change.⁹¹ From 1970 to 2000 Hawaii's combined jail and prison population increased 670 percent, and the incarceration rate increased 400 percent.⁹² "Hawai'i didn't just follow mainland 'tough on crime' trends, it led them."⁹³ In the 1980s the average annual increase in Hawaii's prison population was the second highest in the nation.⁹⁴

Today our jails function as *de facto* mental hospitals and temporary shelters for people who are homeless, too poor to make bail, and have chronic illnesses and substance use disorders.

■ *Modern Jails Should Have a Problem-Solving Function*

There are emerging paradigms in the criminal justice system that focus on problem solving and reducing recidivism rather than punishment.⁹⁵ A few examples are:

- Treatment Courts that offer alternatives to incarceration for offenses related to drug use, mental illness, domestic violence, and issues that specifically affect veterans and youth.
- Community Courts that provide alternatives to jail for low-level offenses;
- Equity Centers that support health, arts, education, and job training for those leaving prison and re-entering society;
- Restorative Justice programs that focus on rehabilitation through reconciliation with victims, family members, and the community at large;
- Peacemaking Programs modeled on Native American practices that seek to resolve disputes, heal relationships, and restore balance to the community; and
- Parent Support Programs that help non-custodial parents find employment, increase child support payments, and engage with their children.

Jails in the 21st century should have a problem-solving function and be part of the problem-solving continuum, though positioned at the far end of the spectrum and used as a last resort.

Assuming that Hawaii enacts reasonable bail reform, pretrial detainees, who make up between 40% to 50% of the jail population, will not remain in jail more than a few days, and certainly no longer that it takes for a pretrial report and risk assessment to be prepared for a judge. During that time detainees' physical, mental, and economic needs should be assessed by case managers at the jail. The case managers should ensure that prior to release detainees have a discharge plan that, at a minimum, includes a place to live, health insurance, a primary care physician,

medication, a cell phone to stay in contact with court personnel, and access to drug or mental health programs, if appropriate.

Hawaii's jails house a relatively small number of felons, misdemeanants and felony probationers who are sentenced to incarceration for a period of less than one year. Their needs should also be assessed, and treatment should begin while they are serving their sentence. They should also have a comprehensive discharge and reentry plan to ensure continuity of care when they are released.

■ *Intensive Reentry Support – The Queens Care Coalition Model*

Some of the people who are released from jail can access services on their own, but some will need extra help which should be provided by a program modeled on the work of the highly successful Queen Care Coalition (QCC). QCC uses community health workers as “navigators” to link high utilizers of the Queens Medical Center’s Emergency Department (ED), many of whom are chronically ill and unsheltered, to services in the community with the goal of improving their health and well-being and reducing their use of the ED.⁹⁶

The QCC navigators have strong communication skills. They carry a small case load of 10 to 12 clients and adhere to harm reduction principles. They meet their clients “where they are at,” build trust, create an agreed upon action plan, and work on overcoming challenges incrementally. They help their clients navigate the complex benefits system, connect them to a primary care physician, and find housing for them if they are ready for it. They sometimes attend doctors’ appointments with the client, take them shopping, and even show them how to prepare simple meals—whatever is needed.

The program works. In the period January 2018 to September 2019, QCC served 322 individuals. In this group, utilization of the ED decreased by 53% and the number ambulance transports to the hospital dropped by 54%.⁹⁷

The manager of the QCC program has said that the model of small caseloads, frequent contact, harm reduction, and goals driven by the patient rather than those assisting them, can be adapted to reduce recidivism by people who repeatedly cycle through our jails without ever getting the care they need.⁹⁸ Navigators should be part of the reentry process for those who need extra help.

Some Design Elements of a 21st Century Jail

For many architects, designers and planners, Halden prison in Norway is the model of good correctional planning. Although it is a prison, not a jail, its design principles and many of its design features are applicable to both types of facilities.

The aim of the design is an environment that supports rehabilitation. Safety and order are maintained through “dynamic security” in which staff and inmates interact constantly and staff serve as role models for inmates. Activities are scheduled to avoid monotony and boredom. The facility is designed to mirror life on the outside to the greatest extent possible so that prisoners do not become institutionalized. The government agencies that provide employment, health, housing, vocational rehabilitation and other services to the general public, provide their services people who are incarcerated.

Interior features include spacious single-occupancy cells with tall vertical windows to admit natural light; wooden furniture (bed, desk, chair, bookcase, storage area); safety glass windows (no bars); the use of materials that dampen sound and provide good acoustics; modules limited to 10 inmates who share a common living area or day room furnished with normal furniture and a television; spaces specifically designed for education, leisure and worship; indoor and outdoor exercise areas; a library; and comfortable areas for contact visits with family and attorneys.



Single Occupancy Cell, Halden Prison

Prisoners should have access to thoughtfully landscaped outdoor spaces. A recent study has shown that prisons with a higher presence of green space have lower levels of self-harm, and lower level of prisoner-on-prisoner and prisoner-on-guard violence.⁹⁹

The jail should have a courtroom for hearings and bench trials. That would reduce transportation costs, the security risks associated with prisoner transportation, and would expedite case processing and reduce length of stay in the jail.



Open space, Halden Prison

Severely mentally ill people should *not be housed in a jail*. They should be housed in a facility specifically designed for the mentally ill and staffed by mental health professionals.

In general, the 21st century jail is designed to respect the physical needs, health, dignity, and human potential of all who come in contact with it, including staff, visitors, service providers, and detainees.¹⁰⁰

CONCLUSION

Planning a new jail provides a unique opportunity to rethink and improve important elements of our criminal justice system in ways that will reduce our jail population and recidivism rate, save money, improve the well-being of people struggling with physical, mental and economic issues, and make our community safer. We should not squander that opportunity by rushing to build a jail that looks backward rather than forward and leaves in place the many antiquated and misguided policies and practices that perpetuate our overreliance on incarceration as a means of dealing with complex social and economic issues.

Planning a new jail must be part of a larger process of planning alternatives to jail. We must increase our capacity to help people while making every effort to reduce the harm that jails cause.

The collective wisdom of community stakeholders must be an integral part of the planning process because the best solutions come from people who know the local culture and environment. The people who have been planning the new jail thus far have underestimated and devalued the wisdom of Hawaii's people and their ability to collaborate and find innovative and transformative solutions to the problems facing our community.

Jails define who we are, what we believe in, and how we treat each other. We should never outsource our values to a corporation or let a corporation define who we are.

Decisions about the type of jail we build, who is in it, and how it is used, are not political or financial decisions, they are moral decisions, and it is clearly immoral to build a jail we know will cause harm, when we can just as easily, and far less expensively, build a jail that will mitigate harm and improve the well-being of members of our community.

We must join together now to stop the State from issuing an RFP for the new jail, and start planning a jail that we can afford and that reflects our values.

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December, 2021

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